



Hope for a Better World



A Creative Estate Planning Newsletter for friends of Ananda

“To Bequeath or Not to Bequeath... That’s *Not* the Question!”

To paraphrase Shakespeare on the matter of final estate planning, to make bequests to loved ones isn’t the question. THE question is whether or not you have a legal will - and if you do, does it reflect your current interests?

We don’t know if Shakespeare had a last will and testament or not, but a lot of equally famous people have not had wills. Did you know that Abraham Lincoln died without a will? Besides being a President of the United States, he had also been a practicing attorney. So we find that not even great and knowledgeable people are exempt from whatever it is that keeps people from taking the necessary steps to put their affairs in order.

Questions About Wills

Why don’t all people have wills? Making a will certainly is a smart thing to do, but deep down a will is not so much a matter of the mind as of the spirit - how a person feels about the people closest to him or her. When you are making a will, provable before the law, you are making legal commitments affecting loved ones that some people find difficult to make.

The flip side of this coin is that by *not* making these commitments, you are subjecting the very people you care about the most to ordeals you shouldn’t wish on your worst enemy.

The good thing about wills is that they’re not written in stone - they *can* be changed and *should* be changed as a person’s life circumstances change.

What is the first thing that happens if a person dies without a will? When it is demonstrated to the probate court that the deceased left no legal statement regarding the disposition of his/her estate, the judge

appoints someone (an “administrator”) to see that all the creditors are paid, proper forms filed, valuable assets appraised and taxes paid. This administrator may or may not be a member or friend of the family. He may simply be someone the judge thinks can get the job done. But, since not everyone may know or trust him, a bond has to be posted, a cost assessable against the estate. This is just the first of many costs made necessary by not having a will.

An administrator is the person appointed by the judge, whereas an executor is appointed by the deceased. It was once estimated that having an administrator instead of an executor handle the estate *doubled* the time and *tripled* the expense before everything was settled.

Doesn’t owning everything as joint tenants take the place of having a will? Ownership in joint tenancy with rights of survivorship does effectively transfer property between individuals. In fact, joint tenancy takes precedence over a bequest under will. But depending upon joint tenancy to transfer/dispose of your most valuable possessions is an *invitation to disaster*.

Joint tenancy can be a devastating version of “winner takes and controls all.” A common misconception about joint tenancy is that “both” own the property. Wrong - only the survivor really does!

Even if joint tenancy were perfect in every instance - which it’s not - you still need a will if you want to properly transfer valuables to heirs not held in title or deed. All things considered, joint tenancy is a very poor alternative to a thoughtfully written will.

What happens when a person dies without a will? What is referred to as the “laws of descent and distribution” take over and the property of the deceased



person is passed on to heirs according to a certain formula devised by the state government. The job gets done - the estate is settled - but the way in which it is done can leave a lot to be desired.

Having the state make your will for you makes as much sense as having a bureaucrat design your clothes, style your hair or pick your friends. The state will dispose of a person's life possessions without regard for original statements, individual need or charitable intent. Because it cannot look into the heart and mind of the deceased, it must base its actions upon rigid rules.

What is the relationship between wills and probate? One exists for the other. Having a will *guarantees* probate. Not having a will also guarantees probate.

Probate is taken from the Latin word, *probare*, meaning "to prove." The primary purpose of the probate process will be to "prove" the validity of the will. Was it written by the deceased? Is it properly signed and witnessed? Does it conform to the statutes of the state?

Probate is also where the will - written and signed in the privacy of the attorney's office and often revealing intimate and personal feelings - is made public. Most people would be dismayed to learn that anyone can go to the probate court and for a few dollars receive a copy of his/her most private family affairs as revealed in the will.

Is a will expensive? The cost of your will may well be the *bargain of your lifetime!* When you consider the thousands of dollars in costs it can avoid, the heartache it can prevent and the joy it can bring, the time and legal fees you spend now will be repaid many times over.

What will run up the cost of a will is when people go to their attorney unprepared. There are plenty of good books on the subject of wills. Reading one or two beforehand means the lawyer doesn't have to be a teacher, also. Many estate planning attorneys have "Fact Sheets" which they will send to you to complete. Remember, the less time you spend in the attorney's office and the more work you do at home, the lower your legal expenses will be.

What are some charitable uses of a will?

Remembering your favorite charities in your will is really the last opportunity you will have to perpetuate your values beyond your lifetime. If what Ananda does is important enough for you to financially support it now, it will be even more so in the future.

"Endowing your annual support" is an idea which many faithful donors like because it allows them to be an active part of their favorite charity's future. Most charities today will honor a donor's request that a gift passed to them in an estate will be used for endowment purposes.

Here's how it works: *Mrs. Brown regularly contributes \$1,000 each year to Charity C. If she were to remember the charity with a bequest of \$15,000 and the charity were to put it in their endowment fund earning 7%, each year the fund would distribute in her name \$1,000 ($\$15,000 \times 7\% = \$1,050$). In this way she becomes "a donor in perpetuity."*

A very creative use of a bequest which does double duty is to give "income streams" instead of specific sums to close family members and friends. This is especially applicable when the beneficiaries are relatively close in age to the testator.

Here's how it works: *Mr. Jones wants to remember his two sisters in his will but realizes that if he does so, his gifts may soon be taxed in three estates instead of just one. So he establishes a testamentary charitable remainder trust, naming his sisters as income beneficiaries for their separate lifetimes and his three favorite charities as the remaindermen. His estate will receive a charitable deduction for the remainder interest and each of his sisters will be reminded quarterly of her brother's creative generosity.*

Conclusion: We hope that the ideas presented in this issue of *Hope for a Better World* will prompt you to seek competent legal counsel in drafting or up-dating your own personal last will and testament. If you would like more information to answer questions we didn't ask, we invite you to send for a complementary copy of *A Guide to Planning Your Will* and/or *Planning for the Future*. Simply return the enclosed card or call: **Parvati Hansen, Janaka Foundation office: 530-478-7695**

Or email us at: parvati@janakafoundation.org
We will look forward to hearing from you.

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