

Assemble a Paper Trail, and Make Sure Your Heirs Can Follow It

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NO one wants to think about dying. But refusing to look at the documents that will determine where your money goes when you pass away will not make you live longer. It will just make sorting through everything more difficult for your heirs.

WHERE THERE'S NO WILL If you die with no will, the state decides who gets your money, said Edythe DeMarco, of Merrill Lynch Global Wealth Management.

Any review of financial health needs to take into account the legal documents that govern our assets and our lives, if we become incapacitated or die with minor children.

Holly Isdale, managing director at Bessemer Trust, said she likes to break down this task into “high priorities and someday-maybes.” And this seems as realistic a strategy as any to force yourself to review these documents.

WILLS AND TRUSTS The whole notion of the sanctity of a will has been thrown into disarray by the expiration of the [estate tax](#). But the bottom line is that, before you can review your will, you need to have one. And 65 percent of Americans do not, according to a survey released last month by [Lawyers.com](#).

There is no excuse for this. A basic will is cheap and can be facilitated through online sites like [legalzoom.com](#).

Many people think that if they die without much money, their heirs will simply inherit it. They will, eventually. But first the state will appoint a conservator and hire lawyers, the costs of which will be deducted from your estate and ultimately decide how your money is passed on, said Edythe M. DeMarco, first vice president at [Merrill Lynch](#) Global Wealth Management. A simple will avoids this.

Once you have a will, it is crucial to keep it up to date. This should be done every five years or whenever there is a major life event. “The pitfall with the will is, they set it and forget it,” said Ken Kilday, a wealth manager at USAA.

In a year when there is no federal estate tax — though there will almost certainly be one in 2011 — reviewing wills and trust documents should be on everyone’s to-do list.

Reviewing both wills and trusts for someone with substantial assets is particularly important this year. Even though there is no estate tax, wills can have clauses that distribute assets to trusts as if the tax still existed. This could end up leaving some heirs too much money and others none at all.

And since a federal estate tax will return next year even if Congress does nothing about it, there will be a need to review everything again in 2011.

BENEFICIARIES The form that can often wreak havoc on a family is the beneficiary designation form. It determines who will get your [insurance](#) and [retirement](#) accounts, so-called contract assets as opposed to financial assets. Many people do not know that it overrides a will.

If you named your brother on your beneficiary designation form for an IRA and die 30 years later without having changed it, your brother, not your spouse or children, gets it.

This happens more often than you would think, advisers said. The reason is forgetfulness. “The worst thing from my perspective is to try to explain to a widow that her deceased husband’s former spouse actually inherits the IRA,” Mr. Kilday said.

Whether this is a high-priority or someday-maybe issue depends on your personal life. But one thing everyone should have is a contingent beneficiary, in case the first one dies before they do. Ms. Isdale said she suspected that many people neglect to name one at the time because they plan to do it later.

HEALTH CARE PROXIES AND GUARDIANSHIP These are two high-priority documents because they address something far more important than money: what happens to you if you are incapacitated, and who cares for your children if you die.

With both, it is essential to make sure the person you have designated is still someone with whom you are in close contact. Often a guardian is named at a child’s birth, but the families move away or lose touch. When it comes to health care, you should also sign a HIPAA, or Health Insurance Portability and Accountability Act, release form so your health care proxy can have access to your medical records.

A related issue is the traditional power of attorney. Many people talk of having a durable power of attorney, but Mr. Kilday points out that if that were the case that person could act on your behalf immediately. What you want is a springing durable power of attorney, which is activated by events you detail.

This brings the conversation back to wills. “The other major pitfall is people have a power of attorney and they think that means they don’t need a will,” Mr. Kilday said. “The problem is that power dies with you.”

TITLING OF ASSETS This is a someday-maybe issue because it can be time-consuming and expensive. For people who would have been subject to the old federal estate tax, for example, it would have made sense to retitle assets like a home in just one name. But, as Ms. Isdale pointed out, not all spouses feel completely comfortable ceding control.

Another issue is the well-meaning parent who, for help with her financial matters, puts one child on her accounts. When she dies, those accounts belong to that child alone, even though her will says the money should be split among all three children.

Even if that child wants to make things right with siblings, he could end up using some of his gift tax exemptions to do so. “You can disclaim it, but it’s messy,” Mr. Kilday said.

SINGLES AND SAME-SEX COUPLES The law always looks for legally recognized family members in dispensing with your estate, but who is going to take care of your affairs if you are not in a traditional marriage?

Someone who is single may want to name a health care proxy who lives closer than a parent who could be thousands of miles away.

Ms. DeMarco said same-sex couples need to be particularly vigilant in their estate and proxy planning. She noted that until a few years ago in Rhode Island, where she works, a domestic partner could not make funeral arrangements; it had to be done by a family member.

Health care proxies are important, but so, too, are the documents that will direct assets to a partner. “For a nonfamily member, it’s a hard and difficult legal road,” she said. “In absence of these documents, the state is going to name the beneficiary, and the law looks to the bloodline.”

BALANCE SHEET If your family cannot find the documents you have worked hard to update, you may have wasted your efforts. Ms. Isdale suggested drawing up a balance sheet that lists the basic information about your assets. She called this a high-priority item and suggested that a more exhaustive one should be on the someday-maybe list.

Mr. Kilday said he advises clients to include a final letter of intent. It has no legal standing, but it can help guide your heirs with what you want done after you’re gone. “Clients kind of chuckle and say, ‘It doesn’t matter to me, I’m dead,’ ” he said. “But from the kids’ perspective they want one last chance to respect and honor you.”