Impediments to a Well-Planned Estate

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It could be said that estate planning today is the art of accumulating, preserving and transferring property during your lifetime and at death. In addition, accumulation, preservation and distribution goals are usually intended to be carried out in a manner that minimizes taxes, probate costs and other related expenses, while being consistent with your lifetime objectives. The overall purpose of the estate-planning process is to develop a plan that will enhance and maintain the financial security of clients and their families. This column is the first in a series discussing some of the most common reasons why some individuals do not have a well-planned estate. Some are fearful of the inevitable, superstitious or simply too busy. Regardless of the reasons, your failure to plan is surely a plan that fails.

Failing to create an estate plan

In a sense, the first impediment involves the failure, either intentionally or unintentionally, to create an estate plan. Many people do not realize that if they have not created an estate plan and executed the appropriate documents to implement their plan, a plan will be imposed on them by the state of Michigan or the state in which they reside. **Everyone, no matter how poor, has an estate plan**. Every state has drafted its own statutory scheme for the disposition of its citizens' property at death in the event the resident dies either without a valid will or without having made a complete disposition of the property he or she owns.

State legislatures have drafted statutory plans that clearly lay out the way in which the property of state residents will be distributed if the resident dies without a valid will. These statutes are called *intestate-succession statutes*, or *statutes of descent and distribution*. In each of these statutes, the state has set out a standardized line of succession that controls who will succeed in ownership of the deceased person's property. Intestate-succession statutes are premised on spousal relationships and degrees of blood relationship (consanguinity) to the deceased, rather than on the distribution of property according to the intentions and desires of the deceased individual. Without a will, a person may not leave property to charity. Neither may a friend who is not related inherit any property from the deceased. If no relatives exist, the property passes to the state. If this situation occurs, the property is said to escheat to the state.

Statutes of intestate succession today are highly standardized and rigid. As a result, the statutes do not take into account any special circumstances within families or any special relationships with non-related parties. Furthermore, lack of planning can unintentionally play havoc with family relationships, resulting in bitterness and hardship for innocent family members. Because of these circumstances, distribution by intestate succession is only used when decedents have failed to advise the state in a legally acceptable manner through a will or similar document what they intend to do with their accumulated property at death.

Once a valid will has been executed, the statutes of intestate succession are largely displaced by the provisions of the will. While a will or other personal disposition by the deceased may, for the most part, override the intestate-succession statutes, those statutes may not be totally displaced. The state is concerned with the support of spouses and minor children, since these individuals could become a financial burden to the state. Therefore, all states either have common-law rules in place or have enacted statutory provisions that protect a portion of the decedent's property for a surviving spouse. The specific provisions of such laws vary from state to state, but they are a form of intestate succession. Individuals should understand what form these provisions take in their states and whether or not they can be changed by the provisions in a will. The surviving spouse's rights often can be enforced only by taking an affirmative step; that is, by making an election to the court to take his or her permissible share under state law against the provisions in a will.

Outdated plans

Another impediment we will discuss concerns outdated plans. With outdated plans the individual actually has an estate plan, but the plan is not current with the person's present wishes or circumstances. While a valid will is a good beginning point for an estate plan, the will (along with other documents) must be reviewed periodically to assure that a property owner's most recent intentions are honored at death.

The birth and adoption of new children or grandchildren, the unexpected illness or disability of family members, and changes in the estate owner's objectives are common reasons for revising an estate plan, will or trust. Major tax law changes may affect the goals of an existing plan or the tax clauses contained in a will or trust; or an owner may perceive beneficiaries and their needs differently over time. Furthermore, guardianship for minor children or arrangements for special-needs beneficiaries also may need to be updated.

A review of a person's will provisions may highlight the need for the will to be amended or completely rewritten under the direction of a competent individual (testator). If family circumstances or laws have changed dramatically since a will was executed, the will's provisions may be seriously out of touch with the property owner's current wishes. Nevertheless, the existing will is the one that will be followed until and unless it is replaced with a later valid will.

This situation can produce some undesirable results. For example, suppose Elaine and her cousin Jason were close friends 10 years ago. Elaine named Jason as a substantial beneficiary under her will. Later, Jason fell into Elaine's disfavor and for years they seldom spoke. Despite the change in Elaine and Jason's relationship, the property set out in Elaine's will 10 years ago will pass to Jason at Elaine's death unless Elaine reviews and revises her will to reflect the change in her feelings toward Jason.

Even if you believe your will or trust document reflects your current objectives, it is

always prudent to review these legal instruments periodically to make certain your intentions will be carried out at your death.

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