



ASSET PROTECTION—A Will Could Cost You Your Family's Fortune

By Attorney David P. Mierswa

A family needs to be aware of the legal pitfalls of not having a will, or worse yet, *having a will*. When a person passes away, their personal property, real property, cash, and cash equivalents become part of decedent's "estate." Most people think that if they have a will, they have a complete estate plan. Simply put, **they are wrong!**

Probate is the process by which legal title to property is transferred from a decedent to their beneficiaries. Most states have a probate code that spells out the laws for litigating a person's estate. The probate code sets an arbitrary total estate amount and if a person's total estate amount exceeds the probate code amount, the estate must be probated. A typical threshold amount would be \$75-100K. An attorney will charge 2% up to 15% of the value of the estate to complete the process of probate court.

Furthermore, any information that goes through probate court becomes a matter of public record, and there is no expectation of privacy. Probate court has two forms of estates: Testate and Intestate. Testate is defined as a person who dies with a valid will. Intestate is defined as having died without a will or without providing legally binding instructions for the distribution of one's property after his/her death.

There are two aspects to estate planning that few people are aware of. An effective estate plan will be a marriage between asset protection and legal estate documents.

- **Asset Protection** is the process of protecting one's assets from lawsuits and lawyers.
- **Estate Planning** is the process of transferring a decedent's assets to the intended beneficiaries while trying to reduce the tax burden upon that estate.

A proper estate plan for an individual or a family should have a minimum of the following documents: *Living Revocable Trust*, *"Pour-over" Will*, *General Power of Attorney*, *"Living" Will*, and a *HIPAA Medical Authorization*.

A Living Revocable Trust, sometimes called an *Inter-Vivos Trust*, is a written legal estate document established during a person's lifetime into which he/she places property. The living trust contains instructions for management and distribution of the trust property during his/her lifetime as well as upon his/her death or disability. A living trust is typically revocable, enabling the person to change it at any time, so long as the person remains legally competent to enter into contracts.

The Living Revocable Trust is the legal instrument that can keep a decedent's estate out of probate court. The *Living Revocable Trust* empowers the trustee to take action without permission of the probate court judge to sell and transfer the estate property. Also, the transfer and selling of the estate property can be affected without the expensive costs of an estate attorney.

A "Pour-Over" Will is a short will often used in conjunction with a living trust that states that any property left out of the living trust will become part of (or "pour-over" into) the trust upon death. A *"Pour-Over" Will* mirrors the *Living Revocable Trust* with respect to the executor(s), also known as a representative, and/or beneficiaries. The executor is the person or institution named in a will and appointed by a court to carry out the will's instructions and to manage the probate estate. The duties of the executor include taking an inventory of all property, paying debts and expenses, and distributing the remaining estate to the beneficiaries.

A "Living" Will, also known as a *Natural Death Declaration*, is an estate-written document that defines the circumstances, such as if the person is suffering from a terminal illness with no expectation of recovery, under which health care professionals should withhold or remove artificial life support, or refrain from using heroic measures, if the person is unable to give informed consent due to incapacity.

HIPAA stands for Health Insurance Portability and Accountability Act. HIPAA was enacted in 1996 to establish national standards for health care providers, healthcare insurance plans, and employers. A *HIPAA Medical Authorization* allows a person or an institution to obtain a person's medical records and healthcare related documents. Without a *HIPAA Medical Authorization*, a person will find it virtually impossible to obtain any medical related documents for fear of the medical provider being sued for violation of this act.

In conclusion, your estate plan is not complete with just having a will. This is an incorrect assumption that can cost you and your family's wealth. A person or their family should have the minimum of the following documents: *Living Revocable Trust*; *"Pour-over" Will*; *General Power of Attorney*; *"Living" Will*; and a *HIPAA Medical Authorization*. All forms should be reviewed by a qualified and licensed attorney.

Attorney David P. Mierswa is an international speaker that has lectured on asset protection and estate planning for over ten years. He has assisted individuals and families to develop estate plans that range from simple to sophisticated.

For a free initial consultation, contact David Mierswa via email at LawyerLLLL@aol.com or visit www.LAW540.com.