



Your Last Will and Testament

is it really necessary?



Mortality is one of those things that is rarely a consideration until it stares us in the face. Sometimes our closing scene may appear as the light at the end of the tunnel, a blessed relief welcoming us as we approach; for most, however, especially the younger ones, it seems so far away that it doesn't even bear thinking about - yet. Then, one day, something happens like a "near-death" experience, and we begin to realise that we aren't bullet-proof. Okay, life's like that - here today, gone tomorrow - so what? So nothing... or maybe the act of dying is much more complex than us simply dropping off the perch. A lot depends on how self-centred a person is, whether they care about those they are going to leave behind. If we've done the right thing by them, we can trust they may shed a tear and remember all of those good times we had together; but they won't be thinking so kindly if our passing has left them with a gigantic mess to sort out. Making a will won't lessen the sadness, but it can prevent a great deal of bitterness and resentment; and, from our point of view, be it on a cloud looking down, or drifting through our old haunts as a ghostly spectre, at least we'll know that we did the best with whatever we couldn't take with us.

Who gets what?

I recall my mother - while she was still alive, of course - assigning certain possessions to specific friends and members of the family. We thought it quite amusing when she would say: "I'm leaving this (humidor) to John because he's the only one who smokes a pipe." Despite the fact that she'd forgotten he'd stopped smoking years ago, to Mum it was a logical bequest that she was more than happy to make. To ensure nobody got it wrong after she passed on, she turned the tobacco pot over to show us a label stuck underneath with her son-in-law's name on. It might have been a good idea, except for the climate - long, hot summers tend to dry the glue on labels. After her funeral, trying to figure out which item belonged to whom was a nightmare because most of the stickers had fallen off!! We were fortunate in having a family that was content to initially receive whatever we thought appropriate, later entering into a selective trade-off so that each eventually got the keepsake they were happier with. Mind you, it doesn't always work out so amicably.

A large estate

Trinkets are one thing, but a sizeable estate, especially when a good part of it is actual cash money, is a different proposition which can lead to disappointment and bad feelings. Even when a will has been made, relatives and friends of the deceased may be dissatisfied with their share, if indeed they have been left anything at all. On occasions, especially when the total is considerable, the matter of who gets what can end up in court; and however illogical and unjust it may seem to ordinary people, the law has its own ideas and can overturn part or all of a will. It is worthwhile bearing this in mind. Drawing up the document can be done on the cheap, and do-it-yourself will kits are fine if there is little of consequence to bequeath, but for those with significant assets it is probably better to pay for legal advice on how to distribute them in a way that is less likely to result in conflict later.

Intellectual property

Although most people won't have to consider this aspect, for some it will be a necessary inclusion in their will. Intellectual property can be anything from the written word as in novels, poems and lyrics; to music, plans and blueprints, designs, even unfinished works such as might be found in an artist's sketch book. In simple terms, it is the product of an individual's mind and talent. Until they are legally re-assigned, or are actually published or sold on a commercial basis, all remain the property of the creator. What happens with them following death might evolve into a gigantic headache unless ownership is allocated to specific individuals prior to the originator's demise. In some instances, the law has already provided for this contingency, in particular the copyright of books and music which is deemed to pass down to and be retained by surviving heirs until a certain period has elapsed when the works are regarded as public domain. Fine, you might think, but imagine the fur flying as relatives and perhaps co-writers launch into a fight over the pickings! Then, a life's work is less of a memorial to the beauty of art than it is an ugly bone of contention.

Trust funds

The difficulty with assigning large sums of money and items which might possibly be worth considerably more after your death than when you are alive is really a lottery. You could be another Van Gogh whose work will fetch millions, or a just an unknown Joe who leaves behind a stack of rubbish nobody wants. That's a bit harsh, I know, but making a will is about reality and the continuation of someone's life after your death. One way out of this problem is to set up a managed trust, a kind-of holding pen for whatever you have created which might one day be worth something. Your elected trustee(s) will be responsible for distributing any income from the sale of such property to the various beneficiaries, always assuming anything at all is sold, or generates royalties. If you decide to go this way and your selection regarding who will manage the fund is a private rather than professional choice, it might be advisable to draw up an agreement granting the trustees a percentage commission for carrying out what could become an involved and possibly lucrative business.

Trust accounts can also be set up to take care of money, naming relatives and friends as beneficiaries of specific amounts. These can be passed over immediately the legalities of your death have been satisfied, or at some later time of your choosing when the conditions detailed in your will have been honoured. Trust accounts would hopefully be earning some kind of interest, and you may decide to allow this to be drawn on while the principal must remain untouched for a given period. You may wish to leave a specific sum to a child, or children, which can only be accessed once they reach a certain age. Obviously this course will require an adult's management until that time, and here's where executors come in handy.

Executors

These people can save a lot of problems. Their job will be to ensure that the terms of a will are adhered to and to arbitrate on any arising disputes or discrepancies. As adjudicators, they should be individuals whom you trust to do the right thing by your wishes and those benefiting from them, but should not be included in the will themselves. One is okay; two are better; any more than that and it could be a case of too many cooks! If you decide to grant this responsibility, remember it could be a heavy one and those you choose need to be impartial, fair-minded and not easily swayed. Ideally, they would be seconded early in the piece and be shown the document to ensure they fully understand it and where you are coming from. Once finalised, the will has to be signed and witnessed before it is considered legal; but whether the laws of a country allow it or not, executors should not be witnesses. They may become Devil's advocates if a serious dispute eventuates and they need to be seen as unbiased and above reproach. Theirs might prove to be

a tougher-than-expected task, so make sure they know this before they accept the request.

Tontines

So far we've been talking about keeping the peace and being remembered with affection, but not everyone is dealt a fair hand when it comes to wills. We've seen the movies portraying the vindictive, supposedly deceased benefactor who makes his relatives suffer beyond belief in some spooky mansion until all but one are dead. The last survivor imagines he or she is about to get the whole swag, then discovers that the old reprobate isn't dead at all and was just playing a cruel joke. Tontines are a bit like that, bequeathing entire estates to a number of heirs, but the catch is that certain conditions have to be met before final ownership is handed over. Sometimes, a period of time has to expire and then the total is shared by all those still living. Then there is the last-man-standing tontine, and I think that speaks for itself. There may be a good reason for bequests of this nature, but I can't think of one that isn't going to cause lingering resentment, perhaps even a family feud.

Legal jargon

Whatever method is employed, a person's last will and testament has to be legal and as binding as the law allows, so the document must be drawn up in language that isn't ambiguous. It doesn't have to be littered with "heretofore's" or "not withstandings", but references should be specific. Items mentioned need to be well-described to avoid confusion, particularly where two or more are similar, or sets and collections are split between recipients. Forget the sticky labels and, wherever possible, include photographs instead. This can be most important with works of art and antiques; and it's not a bad idea to have these valued before deciding who you are going to leave them to - just in case the eventual owners start arguing over who got the most in terms of monetary value.

Specific bequests

Leaving specific amounts, especially to grandchildren, might sound like a good idea, but it can eat into the estate and leave much less for everyone else, in particular the parents of the named children. The adults could be thinking, after the fact of course, that their kids have been treated to something that should rightly have been theirs. Then, not only is respect for the deceased diminished because they are thought to have been playing favourites, but those who feel they have been cheated out of their inheritance can easily turn their animosity towards their own children. Surely, no-one wants that? Any will that contains bequests of this nature needs checking from time to time and updating to ensure the original balance intended hasn't been compromised by either an increase in possible heirs, or a gradual decrease in the value of the estate due to falling interest rates and expenses.

The cost of dying

As with anything to do with life, there is always a price to pay. Dying in particular can be a very expensive exercise, and it isn't made easy for the living when the deceased has left a financial tangle for their survivors to unravel. A legal will that sets out your wishes may have to wait its turn to be administered because there is a certain protocol to be observed. This may vary from country to country in respect of probate, death duties and taxes, and you need to check how your estate is likely to be affected and make allowances if possible. Generally, this part of the proceedings is something of a plod and will sort itself out in due course. In the meantime, family and executors have more immediate concerns. There's the funeral and how to pay for it, plus outstanding bills to clear up. A problem arises when a person dies and their finances are frozen until it is made clear who is legally entitled to draw on the available funds. If the deceased has

kept their affairs secret and no-one has a clue where the money is or how to access it, the strain on the family can be overwhelming. It might be worth considering letting someone you trust into your confidence regarding accounts, passwords, etc., so that relatives don't have to dip into their own pockets before they've seen any money from your will.

Making a last will and testament could seem unnecessary right at this moment in time, but you have to face the fact that you may not be around next week. And if you do pop off suddenly, the peace of mind from knowing you haven't sparked another war of the roses is something you might actually be able to take with you.

Next Issue: Money, Money, Money! – we can't eat it, so why do we need it?

A Season of Happiness - helping you towards a better lifestyle

For a look at some more informative articles on a variety of subjects just click on the navigation bar



Focus



Money Matters



Healthy Living



eBook previews



Recipes



Popcorn

Where every effort has been made to be accurate and fair-minded, comments and opinions expressed on this website are based on personal experience and do not necessarily reflect the views of the wider community or those groups and institutions mentioned. A Season of Happiness and its staff accept no responsibility for any outcome based on suggestions offered. What works for us may not work for you. Please bear this in mind.

Copyright © 2013 All Rights Reserved