

**QUESTION 1:** My wife and I just had our first baby. We do not have much money or property. Do we need a will?

**ANSWER:** Yes. One of the most important things you can do for your children is to designate your choice of the person who would raise your children if you and your spouse were both deceased. Ideally, you would choose someone in your age group that the children know and like and who has the same method of parenting as you and the same religion. Many parents do not have someone who fits the ideal description, but you are the one best qualified to make the hard choice. Do not designate someone without talking to them ahead of time.

**QUESTION 2:** I have heard that probate is a very tedious and annoying process to go thru. What is probate?

**ANSWER:** Probate is the process of gathering all the assets of an estate, paying the creditors, and distributing the assets to the heirs of the estate under the surveillance of the court. It is the process by which the government tries to assure that no funny business takes place that deprives the heirs of receiving their share of an estate in a timely manner. It is not necessarily a bad thing.

**QUESTION 3:** I have heard that probate is very costly. Is that true?

**ANSWER:** There are 3 elements of the cost of probate. The first is the court costs which include the filing fee (currently about \$200), cost of a bond if required (fee is based on the size of the estate) and the fee of the court appointed appraiser. The will can waive the bond, saving this expense, so these costs are usually modest. The second element is the fee paid to the executor or personal representative of the estate. This person does a lot of the leg work and has responsibility for the assets in the estate and their distribution. If this person is

an heir, such as one of the children of the decedent, they routinely waive their fees. If they do not, they are entitled to be paid the same fee as the attorney for the estate. The attorney fees are set by statute as a percentage (sliding scale) of the estate and must be approved by the court. As an example, the attorney fees for an estate with a value of \$250,000 will be in the range of \$6,000.

**QUESTION 4:** If I have a will, will probate be avoided?

**ANSWER:** Not necessarily. It is the value of the estate, and the presence of real estate and a surviving spouse that determines the necessity of probate or a shortened version of it, not the absence of a will.

**QUESTION 5:** If I do not have a will, what happens to my estate?

**ANSWER:** The state has a plan all worked out for you called intestate succession. Based on your family situation, the state's plans assume you would have wanted to distribute your estate in a particular manner. If the state's plan is not for you, you need to have a will to set forth your plan. Generally, it goes to a surviving spouse, but if none, to your children, but if none, to grandchildren, but if none, to you brothers and sisters, and so on. Instate succession does not include any provisions for friends, charities, or anything but close family members.

**QUESTION 6:** If I do not have any close relatives, and I do not have a will, what will happen to my estate?

**ANSWER:** The state will try awfully hard to find relatives, but if they fail within the framework of the state's plan, your estate will go to the state.

**QUESTION 7:** I am a divorced mother and my ex is an awfully bad person. How can I make sure he does not get the kids if I die?

**ANSWER:** You may not be able to make sure. You can designate your choice of guardian but if your ex contests the issue, the court will decide based on what is in the best interests of the children. All things being equal, the natural parent is preferred over a non-parent. If your ex exercises his visitation more or less regularly and cannot be shown to be a foreseeable threat to the well-being of the children, he will probably be given custody of the children.

**QUESTION 8:** What is a Durable Power of Attorney for Health Care?

**ANSWER:** This is a document whereby you appoint someone to direct your health care if you are not able to do it yourself. If, because of age, or health status, you cannot communicate your decisions to your health care provider, the

person designated in your Durable Power of Attorney for Health Care will do it for you. This is a simple procedure and can avoid the costly process of having a conservatorship set up for you in court.

**QUESTION 9:** What is a Revocable Living Trust and what are the benefits?

**ANSWER:** A trust is an arrangement whereby one person who owns property (Trustor) gives the management and control of that property to another person (Trustee) for the benefit of another person (Beneficiary). It sounds more complicated than it really is. In a typical living trust for estate planning purposes, the same person fills all three roles. This owner of the property continues to manage the property for his own benefit during his life and then it goes to residuary beneficiaries. The benefit can be very substantial. Probate costs can be avoided, and estate taxes can be saved.

A Revocable Living Trust is a popular alternative to wills and other estate planning tools. A Revocable Living Trust helps you maintain control of your assets while you are living and will determine who gets your property upon your death. A Revocable Living Trust is favorable to a will in that it does not require probate and you can revoke or amend your trust anytime while you are still living.

**QUESTION 10.** How are a Will and a Trust different?

A Will mandates probate, which means that your Will must be admitted into court and approved by a judge before your assets can be transferred. A Will is not kept private after your death, unlike a revocable trust. Both a will and a trust can be revised during your life if your priorities have changed. However, a trust will allow you to skip probate and will also allow you to name young children as beneficiaries of the property.

**QUESTION 11.** What if my situation changes after I have a will or Trust done?

**ANSWER:** Wills and Trusts are prepared to meet the needs as they exist now. If the situation changes, you may have to make a new will, or if the change is simple, it can be done by a codicil. With Trusts you can have your trust amended if your priorities and situation change. Having a new child, getting divorced, getting married, having the proposed guardian die or move out of state are all reasons why you should change your will and trust. If there is any doubt, ask a lawyer.

**QUESTION 12.** What are tax consequences of having a will or trust relative to not having one?

**ANSWER:** Estate planning is a critical part of financial and tax planning. Yet drafting an appropriate trust, and will, to maximize your loved ones' inheritances by minimizing taxes are all important matters you do not want to leave to chance. Estate Planning documents are complicated and should be drafted by a professional that is both familiar with such matters as estate planning laws and tax laws including but not limited to Income, Gift and Estate Tax Laws, Generation- Skipping Transfer Taxes. Mr. Alan Forester as an attorney and a Certified Public Accountant is uniquely qualified to handle such a complex matter. Failure to consult a tax professional could result in a substantial tax liability for the estate and beneficiaries as the result of an adverse tax treatment of the estate proceeds.