A Widow's Worst Nightmare

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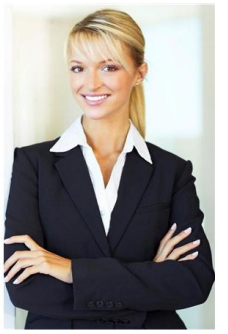

By Tommie Monez, MBA, CFP, ChFC, and Helen Modly, CFP, CWPA

What can be worse than losing a spouse—especially when there are still young children to raise? How about being forced to go through probate and losing needed assets to ex-spouses and estranged family members?

If only there had been a will.

Advisors are used to beating the drum about proper estate planning and predictably, year after year, the same clients will give an awkward laugh and sheepishly admit that they still haven't made a will. It just doesn't seem that important. Dead is dead, right? And besides, all the assets will go to the spouse, so he or she can worry about passing it on to the kids.

If only that were true.

When someone dies without a will, the law of the state they died in determines how assets will be dispersed. Distribution formulas vary according to state law, but they are usually some variation of the following:

- Spouse gets everything if the deceased had no children, parents, siblings, nieces, nephews, or there are no children of a deceased child.
- Spouse gets half if the deceased had one child or there are children of one deceased child.
- Spouse gets one third if there are two or more children or one child and descendants of one or more deceased children.

Within weeks of each other, two young widows came through our doors seeking financial advice. Their husbands died suddenly without wills, and now they're facing the grim reality that the assets in the husband's name will not all pass to them.

The widow from Maryland discovered that she's entitled to one half of the net probate estate, and her minor child will get the rest. The widow from Virginia will receive only one third of the probate estate, and her children and stepchildren are getting the rest. In both cases, the majority of the financial assets were in brokerage accounts in their husbands' names.

Messy, complicated, and expensive

These widows have some serious problems, as their outright shares of the assets are insufficient to maintain their lifestyle and support their children. Additionally, both face ongoing and cumbersome reporting requirements to their county commissioners, not to mention legal and bonding expenses as they manage assets belonging to their children under court supervision. In the case of the widow with minor stepchildren, it remains to be seen whether the court will appoint her or the ex-wife as conservator of that child's account.

We often counsel clients who are widowed to try to wait several months before making large financial decisions. But if money is tight and the courts are involved, time is of the essence. The first hurdle is probate. The court determines how to divide the assets—what goes to which beneficiary. The costs can add up quickly and may include court fees, attorney fees, accounting fees, appraisal fees, and business valuation fees.

When minor children inherit, the bureaucratic red tape begins and costs can be excessive in comparison to the value of the assets that are being protected. It can be a constant struggle to access the children's inheritance for their own upbringing. Interaction with the courts occurs in the following ways:

- The court appoints a conservator to administer the assets in accordance with its rules. This conservator will not necessarily be the surviving parent.
- Court supervision involves formal accountings, which can be costly and complicated.
- The conservator may also require legal representation in court.
- The court controls how funds are to be used and when they can be withdrawn.
- The court's interpretation of reasonable costs for health, education, maintenance, and support is usually very conservative. A parent may be unsuccessful arguing that tutors, orthodontia, music lessons, sports camp, or help paying a mortgage is a necessity. It may be hard to justify using a larger share of the assets for a child with special needs.

What happens when the children are no longer minors?

Children gain full control of their assets at the age of majority, and this can have tragic consequences. Few 18-year-olds are emotionally and financially responsible enough to handle a large inheritance. This sets the stage for a lifetime of regrets if the children spend through all the assets. They may even become injured by an excessive life style due the toxic combination of immaturity and sudden wealth. This is not a great legacy for any parent to leave their child.

At a minimum, parents need to establish wills to protect their spouses and their children. Physical guardians should be designated for any minor child, and any assets that might pass to a minor should be titled to a named custodian under the Uniform Trust for Minors Act (UTMA) or as a trustee for a minor's trust. The guardian and trustee do not need to be the same person, and separating the guardian of the children from the "conservator" of the financial resources is often a very good idea.

Provisions can be made so that the guardian will receive sufficient funds to raise the children without creating an unreasonable burden on their own family and resources. A thoughtful will can also be structured to allow gradual distribution of assets at ages older than 18 or 21.

Our two widows would have been spared all these problems if their husbands had even simple "I love you" wills naming them as the beneficiary of all the separate property. And don't forget, they each need to draft a will now to prevent this from happening all over again if they should experience a loss of capacity or a premature death.

Do it now!

Check with your financial advisor for the name of a good estate attorney. Financial advisors and estate planning attorneys often work together to ensure their clients' estates are financially and legally protected.

And the next time you procrastinate on creating a will, remember the stories of the two young widows now struggling to support their children with far less in assets than they expected or their husbands intended. It can be a nightmare working through the courts for support and maintenance of the children. A proper will is a true act of love and generosity and is absolutely critical in situations where the spouses have separately titled property.

Above all, remember that if you don't create a will of your own, the state will write one for you. Knowing how probate really works might be all the incentive you need to visit that nice lawyer and create a will that can enforce your last wishes and protect your family's assets.

Tommie Monez, CFP, ChFC, MBA and Helen Modly, CFP, CWPA are writers for the New York-based Horsesmouth, an independent organization providing unique, unbiased insights into the most critical issues facing financial advisors and their clients.