

## **Patti Spencer's "Taxing Matters" Column for March 4, 2002.**

### **There's No Such Thing as a Simple Will**

*"For every human problem, there is a neat, simple solution and it is always wrong." H. L. Mencken*

"I want a simple will." Estate planning attorneys often hear this from clients. What do they mean? Simple to them means short and inexpensive.

Short is not always better. If you need open heart surgery do you tell the surgeon you want a short operation? If your car's brakes must be replaced do you tell the mechanic you want him to do the job in 10 minutes? Of course, no one wants surplus verbiage and unnecessary repetition. But short can mean incomplete - leaving unanswered questions, creating problems of construction and interpretation, or short can mean that all contingencies are not covered.

As to the cost, of course, no one wants to pay an excessive price for the value received on any purchase. If you're buying a car seat for your new baby, do you ask for the cheapest one? If you need a root canal, do you look for the cheapest dentist?

As Abraham Lincoln said, a lawyer's time and advice are his only stock in trade. Your documents must be drafted correctly for your wishes to be fulfilled at your death. Any lawyer worth his or her salt will need time to get to know you, your financial situation and your family picture.

Contrary to popular belief, a lawyer can't just "press a button" and a will comes out of the word processor. Very, very seldom do I see a client who does not need some customized provisions in his or her estate plan.

What leads to these customizations? Do you have minor children? Whom are you going to name as guardian to have physical custody of your children? Will you name a successor guardian? Will the same person control the child's money or will there be a separate trustee. What are appropriate expenditures? Can the trustee pay for college? Buy a car for the child? At what age should the child be given control of his or her own inheritance? Does the person you name as guardian get paid? What if he or she has to quit work or enlarge the house to take care of your kids?

Here are some more questions that you may need to address in your will. Who are your children? Does the word "children" include step-children? If it's a second marriage, are your children treated the same as your wife's children? Are the children you have with your first wife treated equally with the children you have with your second wife? Does your second wife agree? Working out how to treat children who are yours, mine and ours can be complicated.

What about grandchildren? Are adopted grandchildren treated the same as natural grandchildren? Are your son's wife's children treated as your grandchildren? Is your son's out-

of-wedlock daughter treated as a grandchild in your will, even if you've never seen her? If a child predeceases you, do your grandchildren take that child's share? Or does it go to his or her spouse?

Does your spouse or a child have a disability? Do any of your children have bad marriage or creditor problems? Does a child or grandchild have an addiction. Does anyone participate in a government entitlement program?

Should you create a trust for your surviving spouse? Do you have a pre-nuptial agreement? Should you make a post-nuptial agreement? Do you want to protect assets for your children in the event of your spouse's remarriage after your death?

Have you loaned money to one of your kids? Does the loan get forgiven when you die or is it subtracted from his or her share of your estate?

In addition to drafting documents that address your personal situations and wishes, the work involved in will preparation also includes review and possible revision of beneficiary designations and asset ownership. Different sorts of problems are created by different sorts of assets. Keep in mind that the purpose of the will is to dispose of your assets according to your wishes, at the time of your death. But not all your assets are governed by the terms of your will.

Wills, for instance, do not govern the disposition of assets that are paid according to beneficiary designations like 401(k) plans, life insurance, and IRA's. However, these beneficiary designations have many complex income tax considerations. Your beneficiary designations must be co-ordinated with your will or estate plan. This is a very complex matter and may require as much time and effort as preparation of a will.

Bank accounts or brokerage accounts in joint names or in transfer on death registration are another example. These need coordination with the will to prevent equalization challenges. What does it mean when the client says "my daughter's name is on the account"? Is it a joint account? Does the daughter hold a power of attorney?

And, finally, of course, time is required to make sure the will is properly executed, witnessed, and self-proving affidavits notarized.

All of these questions and more arise even before any estate tax issues present themselves. Life is complicated, but with competent legal advice you can accomplish your goals. You don't want a simple will, you want one that accomplishes your objectives.

*"Everything should be made as simple as possible, but not simpler." Albert Einstein*