Wills & Estates: Control How Your Assets Will Be Distributed

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Many people put off making a will, convinced that such documents are for older folks who are nearing the end of their lives. In fact, statistics show that more than half of Americans currently have no will or other estate plan in place, which means if they were to die tomorrow, someone else would decide how their assets are distributed – and not necessarily according to their wishes.

“When helping someone plan an estate, it’s important to get a sense of his or her family situation: Who are the family members, are there any special circumstances or needs involved, what are the assets, and how exactly are they owned?” asks Laura Kelly, a partner in the Newark office of McCarter & English, LLP, who represents high net-worth clients in estate planning and administration matters.

Kelly often recommends a trust, which can go hand in hand with a will and allows a third party – called the trustee – to hold assets on behalf of one or more beneficiaries. Trusts can be used for many purposes: For the orderly and private transfer of property to another individual; to sidestep probate costs; or to manage your affairs should you become incapacitated.

“A credit-shelter trust can be like the family nest egg. If the surviving spouse needs the property, it is there for them. If not, it can be invested with the potential to increase in value,” Kelly says. “When the second spouse passes, the trust isn’t dragged into the estate, and the children get the benefit of two estate tax exemptions instead of one.”

“The trick for any parent is to find someone to act as the trustee who is on the same page when it comes to money,” Kelly says. “They’re standing in your shoes when it comes to investments and distributions and considering what you’d do if you were still here.”

Kelly adds that a properly executed plan – while there are costs involved – can potentially mean more money in a loved one’s pockets later on. “You can save a few dollars up front, but that might be a case of being penny wise, pound foolish,” she says. “An inartfully drafted estate plan could miss out on potential tax savings for your family or – even worse – spark a costly litigation over a badly-worded provision.”