

Elder Law Guys: Finding the will to have a will

August 26, 2019 9:30 AM

Julian Gray and Frank Petrich

It's been estimated that as many as 60% of us die without a will or other estate planning documents. The number is even higher for younger Americans (70% of those aged 45-54) than for older Americans (54% of those aged 55-64).

You certainly don't have to be rich and famous not to have a will. Some rich and famous folk who died without a will include Prince, Martin Luther King Jr., Amy Winehouse, Jimi Hendrix, Bob Marley, Pablo Picasso, John Denver, Sonny Bono and Howard Hughes. Wow, what a range of talent, intelligence, net worth and wide variation in age.

Abraham Lincoln — a lawyer, our nation's 16th president and the first president to be assassinated (1865) — had the dubious distinction of being the first president to die intestate (without a will).

Whether you're famous or not, everyone should have a will, even those who just attained adulthood. Kids now talk about "adulthood." Having a will is an adult thing to do.

The issues for the rich and famous are quite similar to those of us who are neither — who gets what, fighting family members/heirs, taxes, determining who will bear the responsibility for distributing your things, who will be the guardian for your minor children, who you want to take care of your pet, etc. As many of you know, the issues become increasingly complex with blended families and co-habiting couples.

Of those who were surveyed without a will, 60% indicated they simply haven't gotten around to making one yet. Just over a quarter (27%) didn't feel that it was urgent to do so (wonder if they had kids).

Why put it off or delay signing one? It's probably depressing for one thing; folks don't like to think about wills because it forces them to think about their own death.

We've had clients who actually thought that if they signed one, it was like signing their death warrant (fortunately, that never happened). Having a will in place can actually reduce their anxiety about their mortality and knowing that their family will have an easier time in dealing with their affairs after they're gone.

Often, folks underestimate the assets they have and how much those are actually worth, thinking that they don't have much to leave to anyone and “the kids will figure it out.”

A will can be simple to have done and it can save you and your family a lot of money and headaches and future resentments.

A will sets the necessary clarity for the legal descendants to rightly inherit the holdings of the person who died. Owing to their big circle of acquaintances and public life, celebrities who die without a will set up the possibility that long lists of claimants will line up to try for a big chunk of whatever fortune they leave behind (think Prince). The follow-up legal courtroom battles are not only costly, but also time consuming and lead to bitter long-time animosities among the parties.

Unfortunately, we have seen less wealthy families subject to the same emotional and financial issues.

Typically, a will says who will serve as the executor (someone who will carry out duties such as gathering the assets, paying appropriate taxes, determining who will receive assets belonging to the decedent and under what terms).

If you die without a will, you are considered intestate. Under intestacy laws, the distribution of your assets is pre-determined according to the degree of the relationship of the person to you. Not only won't you choose the “objects of your bounty” without a will, you can't determine the person you want to manage your affairs. You can't plan to reduce or eliminate inheritance and/or estate taxes, or income taxes.

Simply put, without a will, you typically have no control over your own assets at your death as to what happens to them.

A will is only one of the tools in your estate planning toolbox.

A trust combined with a will along with an advance directive for health care and a financial power of attorney also belong in that toolbox. Additionally, a thorough and continuous review of your beneficiary-designated assets, i.e. IRAs, life insurance policies, annuities, etc. (which should be in sync with your overall estate plan) should be conducted. Have the will to do it!

Julian Gray and Frank Petrich are certified elder law attorneys who practice in the Pittsburgh area at Gray Elder Law. Send questions to elderlawguys@grayelderlaw.com or visit www.grayelderlaw.com.