

Estate Planning and Probate

I once had a 14-year-old client whose 42-year-old father had died suddenly. Her parents were divorced and relations between them were very hostile. My client was disinherited by her father; he made his sister the beneficiary of his life insurance and put her on his bank account. The father may have intended that his sister use the money for his daughter's benefit, but that did not happen. This young girl's sad case clearly illustrates the importance of making plans for death or incapacity.

We never know when we will be taken or struck down, so advance planning is crucial. Random violence, a devastating accident, or a natural catastrophe can happen at any time to anyone. Unexpected is implied by "random" and "accident." People do not make plans for a fatal car crash or a tornado. They just happen.

You cannot assume that your surviving family will carry out your wishes if they are not in writing and properly signed. There is no such thing as "simple" in estate planning. Even a document as common as a will or a deed can have far-reaching consequences. I am often asked how much a "simple will" or a "quit-claim deed" would cost. Such documents are inexpensive to prepare-many times they are prepared without the assistance of an attorney-but the cost can be horrendous if they are not used appropriately. Even a very small estate can turn into a nightmare if the wrong documents are used.

As an example, it used to be quite common for an attorney to prepare a quit-claim deed from a parent to children, to be filed after the parent's death. This seemed to be an easy, cheap, and fool-proof way to pass the house without going to probate court. However, city assessors started treating such deeds as transfers when signed, not when recorded. In Michigan this can result in retroactive property tax increases and penalties amounting to tens of thousands of dollars. The cost in such cases far exceeds what the parent would have spent on a will and a trust at a silk-stocking law firm, or what it would have cost to have the house go through probate.

An estate plan need not be expensive, even if prepared by an expert in the field. However, there are pitfalls in small estates as well as in larger ones. Whether to use a will or a trust, and whether to plan on probating the estate are crucial considerations that require a knowledgeable legal advisor, not just a document preparer. Look for an attorney with a tax or accounting background and experience in probate court. Attorneys who do not practice in probate court may not understand the importance of careful drafting and making documents self-proving.

John Payne, Attorney Garrison LawHouse, PC 1800 Grindley Park Street, Suite 6 Dearborn, Michigan 48124 Come visit me at: http://www.law-business.com 313.563.4900/fax 313.583.3100	Pennsylvania Office: 9853 Old Perry Highway. Wexford, Pennsylvania 15090 800.220.7200/fax 412.548.0022
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