The Legal Insider: *Advantages of Having a Last Will and Testament*

By Jeffrey W. Pompeo, Esq.

Articles encouraging readers to prepare a Last Will and Testament are prevalent in newspapers, magazines and on the Internet.

Here are the advantages of having a Last Will and Testament.

The Right to Choose

Preparing a Last Will and Testament allows you to choose who will receive your assets upon your death; who will serve as "executor" of your estate and who will serve as "guardian" of your minor children (those under the age of 18).

An executor is a person named in a Will who is responsible for carrying out the wishes of the person who died as expressed in the Will.

If you die without a Will, the state will decide who will inherit your assets, which might not be what you want.

The law that determines who will receive your assets if you die without a Will is called the law of "intestate succession."

In New Jersey, if a person dies leaving a spouse, registered domestic partner or civil union partner and:

1. Children who are also the children of the spouse or legal partner . . . the spouse or legal partner receives 100% of the assets
2. Children of a prior marriage . . . the spouse/ legal partner receives the first 25% (but not less than $50,000 nor more than $200,000), plus ½ of the balance of the estate. The children share the remaining balance. If a child predeceased the parent and that child has children, the children share their parent's share.
3. No children, but are survived by a parent or parents . . . the spouse receives the first 25% (but not less than $50,000, nor more than $200,000) plus ¾ of the balance. Surviving parent or parents receive all other assets.
4. Only step-children . . . the surviving spouse or legal partner receives 100% of the assets.

Other provisions of the intestate succession statute address other situations, including if you die without leaving a spouse, registered domestic partner or civil union partner.

Notice to those with Equal Right to Serve

If you die without a Will, the court will decide who will serve as "administrator" of your estate, which is the name given to the person who fills the role of executor when there is no Will. That might not be who you want.

I am presently administering an estate of an 85 year old woman without children who lived with her nephew for 30 years before her death. The nephew applied to the court to be appointed as administrator. Because New Jersey law requires that notice be given to anyone with an equal right to serve as administrator, we sent letters to 21 of her other nephews and nieces asking if they objected to her nephew serving as administrator and if they wanted to serve as administrator; those nieces and nephews were located in Passaic County, NJ; California, Canada and the Philippines.

Having to prepare this notice caused the legal fees to be higher than what they would have been if she had died with a Will.

Posting a Bond

If you die without a Will and a relative or friend is appointed as administrator, they must post a bond, called an "Administrator's Bond," which is designed to protect creditors of the person who died (called "the decedent").

This is true even if the decedent did not have creditors or the creditors had been or will be paid.

The cost of the bond is a percentage of the value of the decedent's assets. The higher the value of the assets, the higher the cost of the bond.

The bond is typically effective for one year. If the estate is fully administered before the end of the one year period, it does not have to be renewed. If not, the bond must be renewed -- and another fee paid -- for another year.

Having a Last Will and Testament eliminates the cost of an Administrator's Bond.

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