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Your Last Will and Testament: Why you haven't done it yet

By Joseph Lichter, Esq.

Do you have your Last Will and Testament yet? Your Health Care Proxy? Your Living Will? Your Power of Attorney?

If you are like many people, you'll respond: "Not yet. I *know* it's important to do it, and I'll get to it soon." But somehow you never do.

So *why* do people who acknowledge the importance of doing a will still procrastinate, sometimes indefinitely?

In my practice, I have found that there are several reasons for this phenomenon, most of which are simply based on an error of what goes into preparing a will. I'll call them "myths".

For purposes of this discussion, I will refer to the preparation of a will as it applies to the overwhelming majority of people, for whom a "basic" will would suffice to address all or almost all of their estate planning needs.

See if any of these rationales for procrastinating sounds a bit too familiar:

MYTH: "It is too hard. My attorney will want me to gather all of my financial records, my credit card statements, the deed to my house, etc. Then, I'll have to take off from work to meet with my attorney and probably spend hours in his/her office. I have a busy schedule...I don't have time to do all this."

TRUTH: As long as you are aware of your general financial situation and you are not among the extremely wealthy, then little, if any, gathering of financial records is necessary. This represents the overwhelming majority of people. In addition, your investment of time is minimal (a couple hours total throughout the whole process). With

regard to taking off time from work to meet: if you are like some of my clients, you'll be surprised to learn that attorneys DO make house calls during non-business hours!

MYTH: "Having a will is not so important. And, if lots of other people aren't doing it, then I don't need to do it either."

TRUTH: The importance of doing a will cannot be over-emphasized. And although there is a feeling of comfort in numbers (fellow procrastinators), in the final analysis, the court will not care just how many of your friends also refrained from doing their wills. There are so many articles and books on the importance of doing a will that I won't address the topic here at length, but I'll give a few examples of what happens when one dies without a will: 1) since you did not appoint a guardian for your children, the State will decide who should care for your children. 2) since you did not direct how you want your assets distributed, the State will distribute them according to its formula; 3) your survivors may pay significantly more to Uncle Sam in taxes (estate taxes can exceed 40%!) than they otherwise would have had to; 4) if you intended to comply with the Jewish Laws of Inheritance, your heirs may be unable to carry that out. In so many cases, these issues could have EASILY been addressed in a very basic will.

MYTH: I'll do it when I get older (this is said by people of ALL ages!)

TRUTH: The unexpected happens. Too often, people of all ages are diagnosed with fatal diseases or suffer unexpected accidents. Nobody wants to believe it can happen to them, but, think about it: don't you know people who you "never would have believed it could happen to them"?

MYTH: "I don't have much (or anything) to pass on to my heirs. I don't need a will now."

TRUTH: A will is a document that incorporates more than just distribution of assets. Among other things, a will establishes who YOU want to be the caregiver for your children; a will also appoints the person you wish to administer your estate after you die. Without a will, the court will decide who these people will be. Also, when you do have assets later (and you will), your will still covers the distribution of those future assets.

MYTH: "Having a will prepared is too expensive"

TRUTH: It is actually not expensive. Clients are always surprised to learn just how reasonable the cost is. They become especially satisfied when they soon understand how much money they have actually saved by doing a will, considering the expenses their estate will now avoid. The money *invested* in a will is repaid many times over to their loved ones.

MYTH: Although I want to distribute part (or all) of my estate according to the Jewish Laws of Inheritance, I don't need to make any provision for that now. The courts will do that for me when my family tells them I would have wanted it that way.

TRUTH: Without setting forth the Halachic distributions you want made, the likelihood of your estate being distributed according to Halacha is minimal, at best. When someone

dies without a will, State law determines how the assets are distributed. This distribution is inconsistent with Halacha. While you may be blessed with family members earnest enough to re-distribute according to Halacha, this is not always a viable solution (e.g., when a minor is one of the beneficiaries). For those who want it done, one can execute a Halachic will that ensures that all your loved ones - even your wife and daughters – are cared for.

MYTH: “I haven’t needed it until now and I’m still fine. I guess it can wait!”

TRUTH: It may sound silly (and people don’t consciously realize they feel this way), but this is actually a common reason for delay. The circular reasoning here would be comical if it weren’t tragic at the same time.

MYTH: “I am single with no children. What do I need a will for?”

TRUTH: True, you don’t have the same concerns about caring for your children, but there are still financial concerns to address, as well as directives about specific bequests. If you couldn’t care less what happens to your assets and your belongings, then you really might not need a will (though you will still need a Health Care Proxy and Power of Attorney- to be discussed in next week’s article).

Of course, there is another reason that people delay: Thinking about death is a painful topic. Envisioning one's own passing and making plans about such a time can seem intolerable. But, when considering this topic, one must think beyond themselves and recognize that preparing a will is an act of care and kindness that you are doing for your loved ones that survive you, not for yourself.

Next week: Do you really need a Health Care Proxy and Power of Attorney?

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