

## Bad Things That Happen to Good People Without an Estate Plan

By Howard S. Klein

The most frustrating aspect of my practice as an estate planner is the unhappy consequences of inaction by those clients who have procrastinated about planning their estates and/or have neglected to execute appropriate protective instruments like advance health care directives and living trusts. Those consequences often are that the clients either died intestate or have become subjects of court-supervised conservatorships administered by persons who may be the last people in the world that the clients would have chosen for the task.

What are the worst consequences that those procrastinators and negligent persons have inflicted upon themselves and their families through failure to act? Here are but a few items in that "parade of horrors."

If both parents of minor children die without leaving a stand-alone nomination of guardian or a will nominating a guardian, a Superior Court judge will decide who will raise those children, since the parents abdicated their decision-making responsibility.

If parties have died without leaving a will or living trust designating the recipients of their assets upon death, that determination will in all likelihood be made by a Superior Court judge pursuant to the law of intestate succession, Probate Code Sections 6400-6455. That may result in inheritance by relatives with whom the decedent has little or no relationship, and in some cases may result in the estate passing to distant relatives whom the decedent never knew existed.

Since the decedent did not designate an executor of a will or the trustee of a living trust, the Superior Court - and not the decedent - will decide who will administer the decedent's estate or living trust.

Important circumstances will not be taken into consideration because the decedent did not address them in a will or a living trust. Such circumstances can include, but are by no means limited to, providing for relatives (for example, autistic or Down's Syndrome children) with special needs that needed to have been provided for, special treatment of adult children who are spendthrifts and should receive their distributions via a trust rather than outright, and disinheriting undeserving heirs who will inherit under the laws of intestacy absent a specific disinheritance provision in a will or trust.

Substantial property that would have escaped probate administration, and its inherent delays, expense and publicity had such property been placed in a living trust must instead pass through the "meat grinder," which is decedent's estate administration in the Probate Court.

Federal estate tax avoidance by substantial estates through creation of appropriate tax saving trusts will not happen, to the potentially great detriment of the decedent's family.

Advance health care directives covering critical situations, often involving life and death, are not prepared. Think of the unfortunate Terry Schiavo situation of a few years ago.

If a beneficiary becomes incapable of managing his or her finances or providing for his personal needs, it will be necessary for the Probate Court to appoint a conservator for that person at great expense to the family. That could have been avoided by the person's timely execution of a living trust, an advance health care directive, and a financial power of attorney.

People may procrastinate or otherwise fail to act in these matters for a variety of reasons. Probably the most common of these reasons are a reluctance to come to grips with unpleasant issues, such as death and incapacity, and an unwillingness to incur the legal fees that are involved in estate planning. A review of the consequences of inaction should convince any rational person that effective, timely action will yield results far more favorable to the individual and his or her family than the fruits of inaction.

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