



Why Everyone Still Needs Estate Planning

Author: Charlotte-Anne Alexander and Micah D. Ball, Attorney at Law
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“Estate Planning” focuses on goals for transferring property during lifetime and at death, minimizing taxes and protecting assets and beneficiaries. Not everyone needs to do “Estate Tax” Planning, but everyone needs to do estate planning.

Without a valid will, your assets will pass to your heirs by “intestacy” pursuant to “The Intestate Succession Act” (N.C.G.S. §29-1, et. seq.) In other words, the State makes your Will for you if you don’t. Applying the provisions of this Act are not usually what the deceased person (“decedent”) would have intended.

Assume a young family of husband, wife and two children, ages 10 and 12. Wife has separate assets including rental property worth \$150,000, stock in a closely held corporation worth \$150,000 and securities worth \$300,000. Wife dies unexpectedly without a valid will. Her “probate” estate includes her separate property of \$600,000 as detailed above.

Under the Intestate Succession Act and because wife was survived by her husband and two children, her husband receives: a 1/3 undivided interest in the real estate, the first \$60,000 of personal property and 1/3 of the balance of personal property. The two minor children would inherit the rest. These assets are distributed as listed on the chart.

Asset	Wife	Children
Rental Property	(1/3) \$50,000	(2/3) \$100,000
Stock	(1/3) \$50,000	(2/3) \$100,000
Securities	First \$60,000,	
	<u>(1/3) \$80,000</u>	<u>(2/3) \$160,000</u>
Totals	\$240,000	\$360,000

Because Wife did not have a will, she has partially “disinherited” the husband and left the court to appoint a Guardian to manage the minor children's assets until they reach age 18. Management of guardianship assets for minors is a time-intensive and expensive process that continues until the children reach age 18. This is just one example of the consequences that could result without a proper will.

To protect your family, a properly drafted will prepared by an experienced estate planning attorney is a necessity. With a proper will, the wife could transfer her assets to her husband. If husband did not survive, she can appoint Guardians for the “care, custody and control” of her minor children. Further, she can establish a trust for the children's education, health care and support. This trust could delay distribution of their inheritance until they are older, rather than at age 18. Finally, she can appoint a person to serve as Executor to administer her estate or as Trustee to manage the children's assets in trust.

The only way to ensure your assets are administered, managed and distributed as you wish is to execute a valid will prepared by your attorney. Your estate plan may also include a Health Care Power of Attorney, Living Will (Declaration of Desire for a Natural Death) and a General Durable Power of Attorney for financial matters.