If You Don't Name Your Heirs, a Court Will

Do I Really Need an Estate Plan?

by Alexandra Armstrong, CFP, CRPC, and Christopher Rivers, CFP, CRPC

On Nov. 27, Tony Hsieh (pronounced Shay) died as a result of injuries incurred in a mysterious house fire. Considered a corporate visionary revered by many, the 46-year-old founder of the online shoe retailer Zappos was worth $840 million but died without a will. A cousin applied to be guardian and executor of his estate but instead a judge appointed his father and brother to sort out the estate. They have a big job ahead of them, since the closest thing Hsieh had to a will was financial commitments written on color-coded Post-it Notes pasted on the walls of his Las Vegas mansion.

Hsieh's case is an extreme example, but it has been our experience as financial planners that somehow people seem to think that if they don't put together an estate plan, somehow they can prevent dying. Of course that is ridiculous, since eventually everyone dies and the timing is rarely predictable. Unfortunately, this past year COVID-19 has caused an unusually large number of unexpected deaths, once again reminding all of us the need for estate planning for everyone.

Estate Tax Implications

As of 2021, the federal estate tax exemption is $11.7 million per individual. Based on this information, you might think there is no reason to do estate planning. From the point of view of paying federal estate taxes, you would be correct. According to the Joint Committee on Taxation only 0.1% US estates will be taxed — really almost eliminating the estate tax for most people.

However, there are a several other reasons you should prepare an estate plan. First, the federal exemption, which is indexed for inflation each year, expires in 2025.

Second, President Biden has indicated that he favors lowering the estate tax exemption to $3.5 million per person and raising the top rate to 45% from the current level of 40%.

Another reason is that even though you might not owe federal estate taxes, some states impose an estate tax, others have inheritance taxes and some have both (check **TaxFoundation.org** online for specifics). The same federal tax law that raised the federal estate tax allowance reduced the deductibility of state income taxes for many people. This may cause people to move out of high-income tax states and thus reduce state tax revenue from estates. If this happens, more states may decide to impose estate taxes or raise them.

Disposition of Assets

Even if estate taxes aren't an issue, the main reason to do estate planning is to make sure your assets go to whom you want them to go. If you don't have a will, your state will dictate to whom your assets will go at your death. This may mean that if you're single, your estate goes to your parents, or if they aren't living, to your siblings in equal amounts. If you're married, it may mean part goes to your surviving spouse and part to your children. Thus to avoid unintended unfavorable consequences including family disputes, you should have a will.

A Master List of Your Assets and Liabilities

Not only did Tony Hsieh not have a will, it appears he had no master list of his assets and liabilities, which were considerable and spread across several states. It also would have been helpful to have a list of where to locate his important documents and how to access his accounts. Having this information is almost as important as having a will.

> **"Since you designate a beneficiary for your retirement accounts, these assets pass outside the will."**

It is important to understand that only the assets titled solely in your name are guided by your will. Since you designate a beneficiary for your retirement accounts and insurance policies, these assets pass outside the will. The same is true for jointly held property or "payable on death" bank accounts.

Note that any joint titling or beneficiary designation takes precedence over what's written in the will. For example, let's assume John has a son, Tim, and daughter, Jane. If John and his son Tim own a bank account together as joint tenants with rights of survivorship, but

John's will says to distribute the account equally to both children, the account will go entirely to Tim and the other assets will be split between Tim and Jane.

Choosing a Personal Representative (PR)

After you've made a list of your estate assets, you next need to select your personal representative (PR) as well as who will serve as a successor in this role if the person you selected is unable or unwilling to serve. Here again since Hsieh had not designated anyone, the court appointed his father and his brother, who may or may not have been his choice to settle his estate.

This is a very important decision, as this is the person who makes sure your assets pass on as stipulated in the will. A PR can be a person or an institution, such as a bank. Many select a close, trusted family member, but make sure you ask that person's permission before naming him or her — you don't want any surprises!

Your PR should be someone who can be trusted as well as someone who can competently fulfill the task. Sometimes you don't have an appropriate family member, so you might delegate this duty to your lawyer or banker. With one client, we suggested that she instruct her PR who is a family member but not particularly financially oriented to ask her estate-planning lawyer to help her PR with the legal issues. In this case, we also recommended that she stipulate the lawyer's fees should be paid by the estate. This way the PR still could make the family decisions.

We've seen instances when a widow names all her children as personal representatives to prevent family discord. It's been our experience that the opposite happens if there are multiple personal representatives. It works better if only one person is designated as the personal representative, preferably one who lives near the deceased. If multiple decision-makers are involved, settling the estate becomes needlessly complicated and leads to family conflict.

If you have minor children, you must designate a guardian. This is another difficult decision and once again should involve having a frank conversation with the potential future guardian to make sure he or she is willing to accept this responsibility. That conversation should also involve your wishes for the children's futures and how those wishes will be funded. Sometimes it's advisable to name two guardians — one who will take care of the children physically and another who will handle the finances. This way you can avoid conflicts of interest.

Work With an Estate-Planning Lawyer

Once you have a master list of your estate assets, selected your PR and guardians, and determined your beneficiaries, you're ready to consult an estate-planning attorney. Regardless of the size of your estate, we think it's important you work with a lawyer who specializes in estate planning; because of his or her experience, issues may be raised you might not have previously considered.

The lawyer will prepare a draft of the will for you to review. Assuming it covers your intentions, the final document is prepared. A will must be in writing and signed by the testator (the person making the will).

You must declare that the will is your last will and testament and must do so in the presence of at least two competent witnesses (requirements vary according to your state) who sign the document. They can't be beneficiaries of your will. The original document is the only effective one. A will that's corrected or marked up might be invalid. Every will should be dated to show which is most recent.

Once you have a valid will, you should review it periodically or whenever you have major life events including inheritances, change of marital status or residence. Most importantly, you need to tell your family where the will is kept. Often the lawyer keeps the original, but you want to make sure the family knows who your lawyer is and their contact information.

If you become a resident of another state, all final legal documents should be reviewed to ensure they're valid in your new state of residence. You can change your will as often as you want unless you become incompetent or are under undue influence of another person.

Please note this article isn't intended as specific legal advice, as that should only come from qualified legal counsel. This article is intended to motivate you to prepare a will or, if you have one, to reread it to make sure it still reflects your current wishes. Your family will be grateful you gave them this final gift!

For more on Alexandra Armstrong, please see Page 42.

Alexandra Armstrong is a CERTIFIED FINANCIAL PLANNER professional and Chartered Retirement Planning Counselor and founder and Chairman Emeritus of Armstrong, Fleming & Moore, Inc.

Christopher Rivers, a CERTIFIED FINANCIAL PLANNER professional and Chartered Retirement Planning Counselor and co-author of this article, is a principal of Armstrong, Fleming & Moore, Inc., located at 1800 M St. NW, Suite 1010-S, Washington, D.C., 20036-5813, 202/887-8135.