

THE DETAILS OF DYING

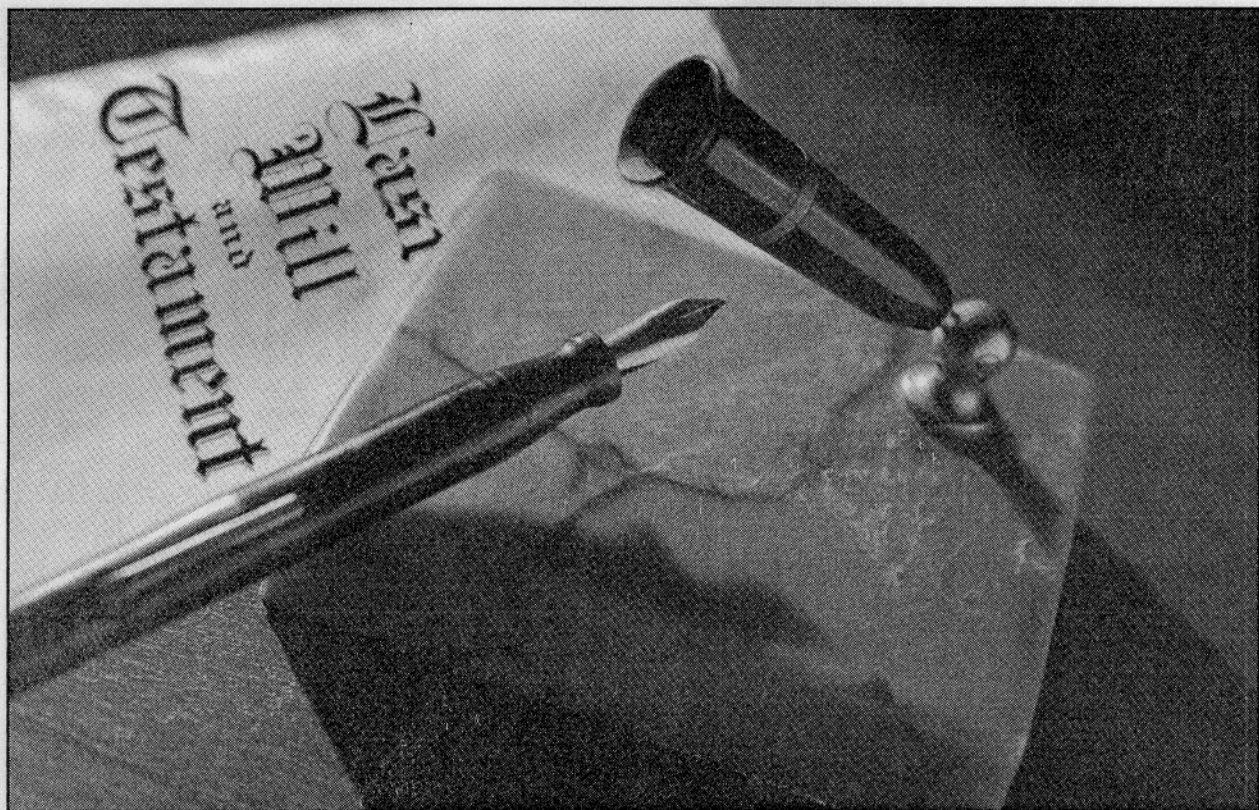
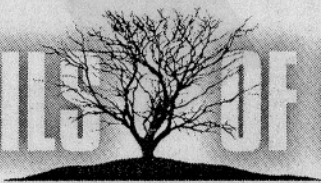


Photo illustration by MARK BUZEK/Staff Artist

Maximizing your assets

With proper planning, your bequests will benefit the people you intended and your heirs won't be taxed out of the picture

Seventh of a nine-part series

By Alexandra Clough
Palm Beach Post Staff Writer

Too busy, too stressed or too superstitious to think about death, most people either put off planning for their estates or draft simple wills without consulting experts.

Well, procrastinate at your own peril, those experts say, because when you die, you could leave a world of trouble for your family. Without proper planning, your assets may be scattered, and your heirs may be taxed to the hilt.

Estate planning — or organizing your affairs for life, disability and death — is not just for the wealthy, top trust and estate lawyers say. Rather, people of all income levels should take stock of their lives now and make decisions about their health, finances and heirs before illness or injury renders them unable to do so.

Depending on the size of an estate, costs

associated with estate planning can range from \$500 to \$5,000.

Estate planning includes several elements. Here's what you'll need for a complete package.

■ **No. 1: A will.**

"I get calls all the time from people who say, 'My will is a simple will,'" said John Levitt, an attorney with Lewis, Vegosen, Rosenbach & Silber in West Palm Beach. "But no will is ever that simple. There's always that wrinkle; there's always one child who isn't good with money."

Wills do more than assign the family jewels to a relative. They outline who gets your assets — and who doesn't.

Without a will, a court will assign your assets to immediate family members. In the absence of relatives, a court may be forced into the "laughing heir" situation, in which a

What do I need?

The five key elements when planning for your estate:

- A will
- A revocable trust
- A living will
- A health care surrogate
- Durable power of attorney

Inside

- Your duties when you're named a personal representative
- What happens with your debts when you die

Stories, 12B

Please see **DETAILS/12B**

Wills help resolve children's guardian, avoid unknown heir

DETAILS

From 1B

distant relative who doesn't know you inherits all your property, Levitt said.

Wills also let you pick your choice of a guardian for children, said Robert Wolf, a sole practitioner in Boca Raton. Without this designation, a court has to pick a guardian, and that person may not be your choice.

When a person dies, his or her will is probated, meaning it goes through a legal process to dispose of assets and pay creditors. The person in charge of this process in Florida is called a personal representative — or an executor in other states — said Garrison Lickle, an attorney with Gunster Yoakley Valdes-Fauli & Stewart in West Palm Beach.

Wills are more than just a way to dispose of your assets. They also can contain provisions — such as trusts — to reduce the amount of taxes your heirs will owe once you die, said Albert Gortz, an attorney with Proskauer Rose in Boca Raton.

Trusts aren't simply for the wealthy. They're a way to shelter money from taxes or hold money back from children until they reach a certain age, Wolf said.

You might think your estate is so small that taxes aren't a concern. But if you have a life insurance policy, think again.

"A lot of people get confused and think life insurance is tax free," Wolf said. "While it is income-tax free, it is not estate-tax free."

Upon a person's death, life insurance proceeds flow to the beneficiary. If the money bumps a person's total assets to more than \$600,000, anything above that could be taxed at phenomenal rates, starting at 37 percent and going up to 60 percent, said Jerome Wolf, a lawyer with Eckert, Seamans, Cherin & Mellott in Boca Raton.

To compensate, consider placing your assets in a credit shelter trust. This separates them from your spouse's assets, allowing the full \$600,000 per-person tax credit.

Some tax relief is in sight. Thanks to the recently passed tax reform bill, estate assets are exempt from taxes up to \$625,000 in 1998, \$650,000 in 1999 and so on — up to \$1 million by 2006, Eckert Seaman's Wolf said.

You also might want to consider a life insurance trust. By putting your life insurance policy into an irrevocable trust, the proceeds of the policy can flow directly to your beneficiary tax-free if you survive the title transfer by three years, Robert Wolf said.



Albert Gortz



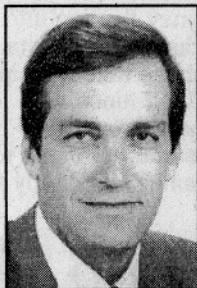
John Levitt



Jerome Wolf



Robert Wolf



LUCIEN CAPEHART

Garrison Lickle

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ROBERT WOLF

Boca Raton attorney

Life insurance policies also can be purchased by the trust, in which case there's no three-year survivorship period.

Once you complete your will, are you done?

Not quite, Gortz said.

Situations change, and families expand. That means wills need to be updated. Rather than treating the document as your Last Will and Testament, Gortz recommends you treat it as "Your Latest Will and Testament."

■ **No. 2: A revocable trust, also called a living trust.**

It's not for everyone, but it's something to consider when planning for your death.

With a living trust, all the assets of an estate are put in the name of the trust. The former owner of the assets is usually named the trustee, said Eckert Seaman's Wolf.

Some people tout living trusts as a way to avoid estate taxes, but that's not the case, Levitt said. What a living trust does is avoid probate.

Living trusts have a couple of downsides. For one, they can be more expensive to set up than a will, Levitt said. While wills can range from \$100 to \$700, living trusts can cost between \$750 and \$3,500 or more, depending on the amount of your assets.

And people sometimes forget to put all their assets into the trust's name, which means their estate still may have to go through probate, Robert Wolf said. To compensate, lawyers frequently draft a "pour over" will that, when it goes through probate, moves forgotten assets into the trust.

A living trust has one important advantage: It lets you pick a successor trustee to handle your assets if you're unable to do so, Lickle said.

Living trusts can be useful if someone owns property in another state and wants to avoid probate there, Gortz said.

■ **No. 3: A living will.**

In today's world, where courts frequently struggle over ethical and religious issues, "you run a real chance of being put on a machine," Lickle said.

your specific wishes, medical personnel have no choice but to try to keep you alive, even if the quality of your life is poor.

But a living will can tell others that you don't wish to be artificially sustained by feeding tubes or other means, Robert Wolf said. It also can contain a provision that says you don't want to be resuscitated.

■ **No. 4: Health care surrogate.**

Similar to a living will, this instrument protects you if your health declines.

If you become ill or injured — but not terminal — you might not be able to handle your medical care. The health care surrogate appoints someone to make medical and nursing decisions for you, Lickle said.

At first glance, you might think this document unnecessary, particularly if you have a spouse.

"But here come second marriages," Lickle said, and that's where the trouble starts.

An example? A second wife decides to put her husband into a nursing home, then is second-guessed by her husband's children.

■ **No. 5: Durable power of attorney.**

This is a very powerful document because it lets another person step into your shoes.

This person has the authority to do everything you do, including transferring assets, paying bills and drawing on bank accounts.

And this person's power becomes effective immediately, even if you're capable of handling your own affairs, said Wolf of Eckert Seamans.

Typically, however, the durable power of attorney is used when someone becomes sick, disabled or unable to handle their affairs.

Lickle and other attorneys recommend drafting a durable power of attorney document even if you have a living trust that specifies a successor trustee. That's because, in many cases, people forget to place every asset inside their trusts. If it's outside the trust, a trustee can't touch it.

How important is a durable power of attorney?

Let's say your mother's bank CD is about to roll over. Suddenly, she becomes incapacitated, and your family needs to tap the CD to pay some debts. Without a durable power of attorney, you'll be unable to access her account. Your family then will have to go to court to get a guardian appointed, which is a time-consuming and expensive undertaking.

"But if that woman had just given her son or daughter a durable power of attorney," Robert Wolf said, "that person could have taken it to the bank and said, 'I want the money.'"

Personal agent needed to handle estates in Florida

By Alexandra Clough

Palm Beach Post Staff Writer

Your father just died and named you personal representative.

What does that mean?

Simply put, the personal representative oversees an estate's distribution of assets and payment of debts. Personal representatives come into play when a person has a will.

Florida law requires that your personal representative be a blood relative, the spouse of a blood relative or a state resident, said Albert Gortz of Proskauer Rose in Boca Raton. A personal representative also can be a state-chartered corporation such as a bank.

This is important to remember if you moved to Florida from another state. If you fail to conform your will to state law and you die, you have a problem if your personal representative is an accountant or lawyer living outside Florida.

State law requires that you hire an attorney in all probate matters, said Jerome Wolf of Eckert Seamans Cherin & Mellott in Boca Raton.

Although that might seem like a ploy to hire more lawyers, the law is based in common sense, Wolf said. Being a personal representative is laborious. It requires meeting several deadlines and performing a plethora of tasks, such as filing income tax returns and notifying creditors.

And personal representatives can be sued if they don't do their jobs correctly, Wolf said.

Yet taking on these tasks isn't without some reward: By law, a personal representative is eligible for 2 percent to 3 percent of an estate. The lawyer for the personal representative gets a similar cut, Wolf said.

When you die, the bills will still have to be paid

By Alexandra Clough

Palm Beach Post Staff Writer

You can't take it with you.

And that goes for your debts as well as your assets.

When you die, your debts don't get erased. Instead, your estate must pay off your creditors before your assets are distributed. Because you're not around, your personal representative must take on this task.

Your personal representative must notify known creditors. He or she also must publish a notice in the newspaper so that unknown creditors know there's a probate.

In most cases, creditors have 90 days to make a claim for the assets. If they don't, they're barred from making future claims.

With a living trust, creditors are not notified directly. Instead, a trustee files a notice of trust with the probate court, said Jerome Wolf, a lawyer with Eckert Seamans Cherin & Mellott. Then, creditors have up to two years to make a claim on the trust.

"That's one of the advantages of probate," attorney Robert Wolf said. "After the three months are over, no one can come out of the woodwork and make a claim."

If you have no assets to pay your debts, then your creditors are out of luck. But if a spouse owes the debt jointly, the creditor can seek payment from him or her.