

PLANNING FOR YOUR FUTURE

I need a simple will. Really, I mean it.

By Bernard A. Krooks, Certified Elder Law Attorney

You have finally decided to do it: to get your estate planning done. You have gotten the courage to call your estate planning attorney and make an appointment. You have gotten all your paperwork organized and collated so that it will be easy for your attorney to review. And then it occurs to you that all you really need is a “simple” will, so you call your attorney prior to the meeting and ask: how much is it going to cost for you to prepare a simple will? The attorney, of course, asks: what is a simple will? You think about it for a moment and then reply: I don’t know but I do know that my affairs are not complicated and all I need is a simple will. You wonder to yourself: why do attorneys always have to make things so complicated? The answer, of course, is that the attorney is not making things complicated; the law has already done that!

By not allowing your attorney to do his or her job, you could be costing your heirs a bundle of money. Take, for example, Mr. Johnson who lived in a subsidized senior housing facility. He visited his lawyer in 1999 and asked for help in preparing a “simple will.” He was very secretive, and did not want to tell his lawyer about his assets. He did insist that he didn’t want to spend too much money in legal fees, and he wanted his will to be simple. Unfortunately for Mr. Johnson and his heirs, the lawyer complied with his request.

Estate planning lawyers are very familiar with the type of client. In fact, no estate planning attorney we know has ever heard a client ask for a “complicated” will — everyone thinks their wills should be simple.

What Mr. Johnson wanted sounded simple enough. He wanted the income from his assets (whatever they might be) to go to his sister and his long-time friend. After both of them died, the remaining money should go to a group of charities. The simple will his lawyer prepared was just two pages long.

Two years later Mr. Johnson died, and it turned out that his estate was worth about \$1.7 million. The will was so simple that his estate did not qualify for a charitable deduction — meaning his estate would pay about \$500,000 in federal and state estate taxes that could have been easily avoided if the lawyer had known he needed to prepare a slightly more complex will.

Was that the result Mr. Johnson wanted? If he had known that the investment of a relatively modest amount of money during his life could have dramatically increased the income stream to his sister and friend, would he have made the investment? We will never know, because his lawyer did not know to ask those questions — Mr.

Johnson had not provided enough information to allow the lawyer to give comprehensive legal advice.

Admittedly, the facts in Mr. Johnson’s case are relatively extreme. But our point is still valid: if we do not have a fairly complete picture of your assets, your family and your intentions, we will not be able to prepare a good will, whether or not it is a simple will. Although the federal estate tax has been repealed for 2010, there is still a New York estate tax. Moreover, the federal estate tax is scheduled to return next year at the \$1 million level.

And now you know: if you really want to surprise your estate planning lawyer, just sit down in the first conference and insist that what you are hoping for is a complex will.

Incidentally, Mr. Johnson’s case is a real case (the names have been changed). The charities in Mr. Johnson’s simple will ultimately joined forces with the sister, the friend and even the state Attorney General to ask the courts to reform the will so that the estate tax effect could be eliminated. After spending, presumably, thousands of dollars in legal fees to argue their case, they were all turned down by the courts. Thus, Mr. Johnson’s secrecy — and his thrift — ended up costing approximately half a million dollars.

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