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## **NO ONE WANTS TO TALK ABOUT DYING**

### **Questions concerning your Estate**

#### **Prepared for Lafayette Avenue Presbyterian Church**

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**Disclaimer: This Is an Informational Seminar and not intended for solicitation of business.**

### **Questions for discussion**

#### **Question: (Q): What is a Last Will and Testament (Will)?**

Answer: (A): Last Will and Testament (Will) is a written instrument conforming to the laws of the jurisdiction where written directing the distribution of your assets after your death and appointing a person or firm to act as executor/executrix to carry out those directions and distributions. Your Estate is the property held in your name that is distributed by your Will or if you do not have a Will by the Law of Intestacy.

#### **Q: Who can make a Will?**

A: Any person over the age of 18 and who has the "testamentary capacity", meaning the mental ability to know the nature and extent of that person's property, that the person is making a Will and who the natural objects of that person's bounty are (your family).

#### **Q: Who needs a Will and Why?**

A: Generally, everyone needs a Will. A Will is one of the most important documents you will sign. One of the most important things that a Will provides is the person who will administer your estate. In your Will you designate a person to act as executor or executrix, with or without a bond. It provides for the distribution of your assets to family, friends and charitable institutions. It directs who will pay the NYS and Federal estate taxes which may be due, the assets that pass under the Will and assets that pass directly to beneficiaries, such as life insurance. Further, you can designate a guardian of minor children in the event of death of both parents and provide for creation of a testamentary trust for benefit of minor children or any other beneficiary.

**Q: What happens if I die without having a Will?**

A: If you die without a Will as a New York State resident, the NYS Legislature created a law which dictates how your estate will be distributed. This is called the Law of Intestacy (dying without a Will), and dictates that your estate be distributed as follows if you are survived by:

<u>Person surviving</u>	<u>Distributive Share</u>
Spouse and no issue	All to the spouse.
Spouse and Issue	Spouse takes \$50,000.00 plus one-half of residue, issue take rest by representation.
Both parents and no spouse or issue	Parents take one-half each.
One parent and no spouse or issue	Parent takes all
Brother and sisters or there issue and no spouse or issue of parent	Brothers and sisters take all (the issue of predeceased brothers and sisters by representation)
Maternal and paternal grandparents or grandparents or their children (decedent's aunts and uncles) or grandchildren (decedent's first cousins) and no spouse, issue, parents, brothers, sisters or their issue.	Maternal grandparents take one-half (or their children or grandchildren by representation). Paternal grandparents take one-half (or their children or grandchildren by representation).
Only maternal or only paternal grandparents or their children or grandchildren and no spouse, issue, parents, brothers, sisters or their issue	The grandparents of their children or grandchildren take all by representation.
Great-grandchildren of grandparents (decedent's first cousin once-removed) and no spouse, issue, parents, brothers, sisters or their issue	Maternal great-grandchildren take one-half per capita: Paternal great-grandchildren take one-half per capita: or if only maternal or only paternal great-grandchildren survive, they take the whole per capita.

**Q: Is estate planning only for the rich?**

A: No, as you can see from the above distribution that occurs without a Will; by making a Will and designating a person to act as your executor/executrix, you are making plans for those who survive you. The Will becomes effective after your death and when it is admitted to probate. By your designating a person to act as executor/executrix, your estate is saved from having competing decedents from petitioning the court for letters of administration. Further, you can elect to waive the requirements of having the person having to post a bond while acting as the executor/executrix to serve and save your estate from the additional expense of posting a bond. Whereas Surrogate would make the determination for an Administrator and if a bond needs to be posted.

**Q: What is Estate Planning?**

A: An estate planning is more than just a Will, it is also an overview of who you want to designate to make medical decisions if you are disabled or unable to talk or act (such as in a comma), when to disconnect life support, who you want to serve as a guardian on your behalf, the place where you want to live, who you want to make decisions about your assets, what happens to your remains after your death respectively, these are called Health Care Proxy, Living Will, Intent to Return Home, Article 81 designation, Disposition of Remains Designation and Power of Attorney. In the Power of Attorney, you designate someone to have access to your assets if you are unavailable or away and that person acts as your agent. These documents are for when you are alive and terminate upon your death except for the Disposition of Remains Designation. An estate plan also should include alternate persons to act and to benefit, as you may not be able to rewrite your will if the primary beneficiary should die before you.

**Q: What documents do I need when making a Will?**

A: Generally, the documents need to include an inventory of your assets, your family tree, list of family, friends and charities that would be beneficiaries under your Will and the persons to act to carry out your Will. You will need to determine how your property is held, is it jointly held with right of survivorship or individually? Property held jointly with right of survivorship pass automatically upon your death. You cannot change this is a Will. Named beneficiaries of life insurance policies, bank accounts or pensions are also not able to be changed in the Will.

**Q. Do I need an attorney to draft a Will or Codicil?**

A: Legally, you do not need an attorney to draft a Will or Codicil. However, for a Will or Codicil to be valid there are statutory requirements that must be met. Having an attorney being at the execution of the Will and Codicil assures that all formalities will be complied with.

**Q. Should beneficiaries be informed that they are named as beneficiaries in my Will?**

A: No. You may change the Will and change the amount, or your relationship could change, and you may decide in a revised Will not to give this beneficiary any assets in your estate. If the Will had been filed in the Surrogate's Court or you made the change decreasing the amount to the beneficiary by Codicil, this beneficiary, even if they are not a distributee could challenge the Will or Codicil. As a Will is written to reflect your situation at the time of execution and events and interest change, it is best not to discuss distribution with beneficiaries. It is your estate and you should distribute the assets as you wish, therefore, I do not recommend filing the Will in the Surrogate's Court prior to your death, as it requires that anyone cut out of a Will filed with the Court, who receives a lesser bequest can file objections to the later Will and/or Codicil. This is the same reason that I do not recommend Codicils to Wills. As any person adversely effected by a codicil can challenge the Will.

**Q. What are the best gifts to Charities?**

A: It depends on your assets and if it is gift is during your lifetime or after your death. A gift given during a person's lifetime of an asset that have appreciated to a charity, because the basis is stepped up to the donor, and the person can take a deduction for the stepped-up bases as a charitable deduction on their income tax return. The charity gets the assets which it can sell and as a charity it is exempt from the payment of tax on the sale. A bequest in a Will to a charity can be made to further the charities goals and if the value of your estate is under seven million dollars (\$7,160,000.00); not subject to NYS estate tax and under fourteen million dollars (\$13,9990,000.00) not subject to Federal estate taxes. Gifts to charity are deducted from your gross taxable estate. The tax figures give above are approximate for estate values as the Tax laws are indexed for inflation and tax rates are expected to change within this tax year.

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