

Is a Will Right for Your Clients?

Every client, regardless of the size of their estate or their age, can benefit from a will that gives legal effect to their inheritance plan. Even if they have a trust to manage asset distributions, a trust cannot address every estate planning consideration. Wills have limitations as well, but they belong in a comprehensive estate plan.

What a Will Does—and Does Not Do

Wills, along with trusts, powers of attorney, and living wills, are some of the most basic estate planning documents. A will states how someone (the willmaker) wants their assets (accounts and property) to be passed down when they die.

- It names who the beneficiaries are and how much they will receive.
- It also names an individual (the executor or personal representative) who oversees paying off debts, distributing assets, filing all necessary paperwork with the probate court, and filing the appropriate tax returns.
- In addition to naming an executor, a will can name a guardian to care for the willmaker's minor surviving children.

These are the primary functions of a will, but it is equally important to understand what a will **does not** do.

- A will only governs the disposition of assets held individually in the willmaker's name without a beneficiary designation at the time of the willmaker's death.
- A will cannot dispose of assets that are owned jointly or governed by beneficiary designations or other contracts. Beneficiary designations on life insurance policies and retirement plans take precedence over a will, as do payable-on-death (POD) and transfer-on-death (TOD) designations on bank accounts.
- Wills do not provide for incapacity planning.
- Wills only take effect upon the willmaker's death but can be revised any time prior to death, as long as the willmaker has the required mental capacity.

What the Client Owns Could Play a Role

Whether or not a will is an appropriate estate planning tool for a client may depend on the type and amount of assets the client owns. If most of what the client owns will be distributed according to a beneficiary designation, POD or TOD designation, or by operation of law due to joint ownership, a client may look at a will as a safety net in case there are assets that end up having to go through probate. If your client has modest accounts or property, the client may be okay with their loved one receiving their inheritance outright and may think that putting too many restrictions will eat into the inheritance being left behind. It is important to remind clients like this that they will be relying on the beneficiary designations to distribute their assets, so their designations need to be up-to-date.

Some Clients Want an Easy Solution

Although a will has its limitations, some clients are interested in estate planning tools that are easy to understand and that will be quick to put into action. With a will, the client is leaving instructions for what will happen at their death. Once the will is signed, the client retains ownership of their assets, and no additional paperwork is needed to put their plan in place (with

the possible exception of updating beneficiary designations if changes need to be made). Compare this to a trust-based estate plan, in which all or most of the clients' assets will need to be retitled to make the trust the new owner after the plan is signed.

A Third Party Can Be a Good Thing in Some Instances

While most people value their privacy and would not want the details of their assets and beneficiaries made public, using a will and having beneficiaries go through the probate process can sometimes be a good thing. If the client believes that there will be fighting among family members, going through probate allows a third party (the judge) to oversee the proceedings and make sure that everyone is on their best behavior. If the client is worried that their family will be too lazy to manage things on their own, probate can provide the required structure, timelines, and oversight to ensure that all the required tasks are completed in a timely manner.

The Importance of Financial Advisors in Estate Planning

Recent survey data shows 7 out of 10 Americans say that estate planning is important—yet just 26 percent have an estate plan.¹ **The survey also found that working with a financial advisor is the largest variable in whether someone has an estate plan.**²

While estate planning strategies change over time, the documents that comprise a plan are tried and true. Wills can be thought of as the foundation of an estate plan that, when used strategically with other documents, supports a strong and lasting legacy.

The ease and simplicity associated with setting up a will is a major selling point that can help to dispel the notion that estate planning is overwhelming or intimidating. Once a client has a will, you can steer them toward additional estate planning services that synergize their financial and legacy objectives.

If you or your clients have questions about wills and estate planning, please reach out and let us know how we can help.

¹ *New FreeWill survey data: a look at Americans' views of estate planning and how it fits into overall financial planning, giving intentions*, PR Newswire (Apr. 23, 2024), <https://www.prnewswire.com/news-releases/new-freewill-survey-data-a-look-at-americans-views-of-estate-planning-and-how-it-fits-into-overall-financial-planning-giving-intentions-302123963.html>.

² *Id.*