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Wills & Estates

The Money Issue

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The aging population and changing inheritance laws are influencing the way Americans look at will and estate planning. While Baby Boomers – generally considered those between ages 52 and 70 – are more likely than ever to have living parents as well as children to consider when making a will, Millennials (ages 18-35) are unlikely to think about these issues until they get married and have children of their own – life events that many are experiencing much later than their parents did.

"Millennials are much more likely to have non-mortgage debt. Their living expenses, including housing costs, are high. They are much more focused on their immediate needs instead of projecting out to the future," says Wendy Herbert, a partner with Fox Rothschild LLP in Lawrenceville. "For many, drawing up a will is not high on the priority list."

In 2014, Gallup reported that just 27 percent of Millennials are married, compared to 48 percent of Baby Boomers when they were in that age range. More women are choosing to focus on their careers and put off having children. And according to a 2013 study from Georgetown University, Millennials are not moving up the corporate ladder and amassing wealth quite as quickly as their parents did.

"Many of them think they don't need a will because they don't have anything," Herbert says. "But they might have life insurance through their job, or even a little equity in their home. They should have a will so they can control where these assets go if anything should happen to them."

In reality, it's only after having a child that most people think about a will and/or estate plan. That's when they start to ponder the difficult "what if" questions: "If anything happens to me, who will have physical care of my child/children? Who will oversee the money I left them?" (This is often the same person, but not always.)

"Having guardians named and trusts in place for your children will ensure that your wishes are carried out and minimize the court's involvement," says Crystal Levy, J.D., supervisor, tax and business services, estates and trusts practice group for Marcum LLP in New York City. "Additionally, you want to be able to choose your executor and/or trustees and not leave it up to a judge."

When making a will, Millennials are also likely to leave money to their parents, who have a longer-than-ever life expectancy, as well as a favorite charity or non-profit. In addition, they are moving toward more creative approaches to estate planning, according to Levy. “It is becoming more common to see unmarried couples, same-sex couples, inter-faith relationships and other types of modern and non-traditional family dynamics,” she says. “In contrast, the typical Baby Boomers tends to prefer more traditional and conservative estate planning approaches.”

Because of their age and place in life, Baby Boomers are more likely than Millennials to have a will and estate plan in place (though statistics show that about two in five do not). Most Baby Boomers are either finished with or at the tail end of raising their children and are starting to think about retirement and moving wealth to the next generation in a tax-efficient manner.

“Baby Boomers need to consider where their kids are in their lives, and if they have to worry about how money is transferred after they’re gone,” Herbert says. “It’s not an easy conversation to have, but a discussion between generations often makes things a lot better.”

Among the issues to consider, if the Baby Boomers has his own business is: will he sell it or pass that business on to his children? Or, if that person no longer has the physical or mental capacity to make her own decisions, does the estate plan put someone in charge of her affairs? Is there a child with special needs who shouldn’t be given more than a certain amount of money at one time? Is one of the children in a troublesome marriage, which might mean their assets should be protected in the event of a divorce?

While Millennials tend to set up trusts for their children that have an end date – when the child turns 21, or 35, for example, he or she receives a certain portion of the estate – Baby Boomers often prefer lifetime trusts designed to protect their children from creditors, lawsuits, failed marriages, and the like.

“You might say Baby Boomers are more cynical,” says Martin Lepelstat, shareholder in Greenberg Traurig’s trust and estates practice in Florham Park. “They’re more concerned about long-term issues. They’ve seen the economic ups and downs.”

In addition to children and grandchildren, many Baby Boomers still have living parents – something that wasn’t as much a factor for earlier generations. “But leaving money to those parents, who may be in their late 80s or 90s, may push them over the edge and leave their estate subject to an estate tax, or potentially exclude them from getting Medicaid benefits,” says John Loalbo, a partner in the trusts and estates practice group of Riker Danzig Scherer Hyland & Perretti LLP in Morristown. “Instead, it’s better to leave assets to children or siblings, as that money will eventually filter down to them, anyway. If that parent doesn’t have a lot of wealth, taking care of them through a trust may be a better solution.”

Finally, once you have a will, it’s important to keep it current. Lepelstat recommends updating your will every five years for a Millennial, and every three to five years for a Baby Boomer, to account for changes in financial status, family situations, or the law.

“Both Millennials and Baby Boomers value retirement and a sense of financial security in the long-term,” Levy says. “Most people of all ages know that things will need to be taken care of for when – not if – the time comes, and their family and loved ones are most important. Each person’s will should be customized to their particular situation.”