

ESTATE PLANNING 101

Test Your Knowledge

(Answers at end)

1. Sally is married and has two children, ages 5 and 7. Sally does not have a Will. What would happen to Sally's assets if she passed away without a Will (i.e., Intestate)?

- a. 100% to Sally's husband.
- b. 100% to Sally's minor children.
- c. 50% + \$100,000 to Sally's husband, the remainder split between her minor children.

2. Mary and Jim have been married for 15 years and have three children. Together, they have a monthly after-tax income of \$7000, which allows them to pay all of their monthly expenses, as well as put a modest amount toward their savings and retirement accounts each month. They own the following assets:

ASSET	VALUE	Examine Your Own Assets
House	\$400,000 (fair market value – mortgage)	
Checking Account	10,000	
Savings Account	50,000	
Retirement Account	350,000	
Mary's Employer-Sponsored Life Insurance, payable upon Mary's death	100,000	
Jim's Employer-Sponsored Life Insurance, payable upon Jim's death	200,000	
Individual Term Life Insurance Policy, payable upon Mary's death	500,000	
Individual Term Life Insurance Policy, payable upon Jim's death	500,000	
TOTAL	\$2,110,000	

Jim and Mary do not think they are wealthy enough to have to worry about estate taxes, plus, they heard that if they leave all of their assets to each other, then there are no estate taxes due. Should Jim and Mary worry about estate taxes?

Yes/No

3. Dick and Jane are both in their 50's, have been married for 25 years and have no children. They own a small home worth approximately \$200,000 in joint tenancy, and a joint bank account worth approximately \$50,000. Since they know that they do not have a taxable estate and that their assets would pass to the survivor of them, they do not believe that they need to worry about estate planning. After an automobile accident, Dick is lucky to be alive, but is mentally and physically unable of taking care of his own finances. In order to pay for his continuing medical needs, Jane must sell their home. What could Dick and Jane have done before his accident that would have made this situation easier for Jane?

- a. Execute a Last Will and Testament
- b. Execute a Durable Power of Attorney
- c. Execute Health Care Instructions

4. June, a young wife and mother, has had extensive discussions with her husband regarding her wishes to not be put on life support if she is in a coma. She believes that his knowledge of her wishes is enough. Is she correct?

Yes/No

5. Ralph and Leslie are married and have three minor children. Ralph and Leslie have agreed that if something should happen to both of them, they would want Ralph's sister to take care of their children. What should Ralph and Leslie do to ensure that their wishes would be followed?

- a. Convey their wishes to Ralph's sister
- b. Convey their wishes to their other family members
- c. Execute Last Wills and Testament
- d. All of the above

1. (c) \$100,000 plus 50% of the remainder of Sally's estate will pass to Sally's husband and the balance will pass in equal shares to Sally's minor children, EVEN THOUGH THEY ARE MINORS!!!!

- Most people assume that 100% will pass to their spouse.
- In most cases, the surviving parent will have to go to court to be appointed the Guardian Ad Litem for the minor children during the probate process. And after the assets are distributed, the surviving parent will be limited on how he or she can use the child's funds—they must be used for the child's benefit only.
- Caveat: This law applies to PROBATE assets only. Probate assets do not include assets that pass by contract (i.e., beneficiary designations in 401(k) and life insurance policies or assets that pass by law (i.e., property held jointly with rights of survivorship.) Most couples own their homes jointly with rights of survivorship.
- Certain problems can arise when assets are held in joint tenancy. For instance, some elderly individuals hold bank accounts with their children who assist them with bill paying. After the elder's death, the entire account passes to that child, regardless of whether there are other children or even if the elder's will says that everything should be split equally among the children.
- Not having a will also increases the administrative costs of probate. In most family situations, the individual executing the will names a spouse or other close family member or friend to serve as Executor and trusts the person enough to not require that person to post a bond. In the Will, the person can state that the executor need not post a bond. If there is no will, the court will require the executor to post a bond in an amount equal to the value of the decedent's estate. Bond rates range from \$80/year for a small estate of \$20,000 to nearly \$1400/year for estates of \$650,000.

2. YES!!!! The estate tax exemption is \$2 Million for 2006-2008. This means that everyone is entitled to give a total of \$2 million to others either upon death or during lifetime ESTATE TAX FREE.

- Mary and Jim are correct that you can also pass an unlimited amount of money to your spouse ESTATE TAX FREE. The problem occurs when the surviving spouse dies and has the entire estate in his or her name. For example, if Jim died and left everything to Mary, Mary would then have an estate worth over \$2 million. If Mary then died when the exemption is still at \$2 million, the estate taxes owed by her estate would equal over \$50,000!!!!
- To remedy this, Jim and Mary could set-up Trusts to hold their assets after their death. Then, when Jim passes away, his one-half of the estate, up to the exemption amount, would be held in his Trust. Provided Jim and Mary get along, they could fashion the trusts so that the surviving spouse has use of the trust funds for his or her lifetime, but with certain limitation that cause the trust to not be included in the survivor's estate upon her death. Then, when Mary dies, her estate would be only one-half of the total assets (approx. 1 million dollars) and would pass entirely estate tax free to her beneficiaries.
- Another benefit of putting your assets in a trust after your death is you don't have to worry about your surviving spouse going out and spending all of the assets on a fleet of cars, or a young lady friend! By putting your assets in trust, you give your spouse

the ability to use the funds for his support, maintenance, and health, but he cannot change who you choose as your ultimate beneficiaries.

- Many people forget to include the value of life insurance policies when they tally their estate.
 - The column at the right is for your use, if you want to estimate your own estate value. 529 plans are not included in your estate, but rather your designated beneficiary's. But life insurance and 401(k)'s are included in your estate.
 - Estate Tax Exemptions: \$1.5: 2005; \$2.0: 2006-2008; \$3.5: 2009; repealed 2010; back to \$675,000 in 2011.
3. (b) The most useful document that Dick and Jane could have executed to make the situation of selling their home easier for Jane is a Durable Power of Attorney.
- A Durable Power of Attorney allows a person who you name—your Agent—to act on your behalf with respect to financial matters.
 - Can be made effective immediately or only upon your incapacity.
 - Since Dick did not execute a DPA prior to his accident, Jane will have to go to court to obtain a conservatorship over Dick in order to sell their home. A conservatorship requires a court hearing, a probate bond so that the court is assured that the Conservator will not run away with the Ward's assets, and constant court supervision, including hearings upon any special occurrence, such as selling the Ward's home.
4. NO!!!! Doctors are obligated under oath to do what they can to keep patients alive. Unless the entire family agrees to remove a person whom the doctor believes is in a persistent vegetative state from life support, the doctor will keep that person on life support.
- The only way to ensure that June's wishes to not be on life support if she is in a coma are met is for her to execute Health Care Instructions.
 - In the Health Care Instructions document, you can also name an Agent to make other medical decisions for you. This is extremely important as well because if you are unable to make health care decisions for yourself, the doctors may require your caregiver to obtain a conservatorship before they will take orders from your caregiver.
 - The document also speaks to Organ donation.
5. (d) All of the above.
- One of the most important reasons for executing a Will for those who have minors is to nominate the guardian of your children should something happen to both you and your spouse.
 - The Probate Court has final decision to appoint the guardian, but they give high deference to the decedent's Will because of the formalities in writing a will.
 - It is also important to speak to your proposed guardian to make sure it is something they want to and can do.
 - It is also important to speak to your other family members because if they hear your wishes from you (as opposed just from reading your will) they will be less likely to fight the appointment.