Your Last Will and Testament

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Your Last Will and Testament

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There’s more to leaving a will than deciding who gets what.

This issue of The Wealth Channel Magazine is all about change, so I thought this would be an ideal opportunity to discuss the last changes you may ever have the opportunity to make.

Do you have a last will and testament? Whether you think you do or not, you do. Allow me to explain. Hopefully, you are one of the approximately 40 percent of Americans who have sought out the services of an attorney and had them help you craft your last will and testament so that it reflects your exact wishes. If, however, you are in the 60 percent majority of Americans who have failed to carry out this duty to your family or loved ones, the state in which you reside at your time of death has crafted one for you. Unfortunately for you, and especially for those you leave behind, it most likely will not reflect your desires.

Dying without a last will and testament is known as dying intestate. It means just that: You failed to craft your own will and testament before your death.

As life and financial services professionals engaged in the sales of products that change people’s lives, we are often involved in talking about a cli-
ent’s possible demise. As a trusted advisor, I am confident you have told your clients that among the most important things they can do to get their affairs in order is the acquisition of appropriate estate planning documents. While these documents may have different nomenclature depending on the state in which the client lives, these estate-planning documents might include:

• Last will and testament
• Living will
• Medical directive
• Power of attorney
• Medical power of attorney

Just as important as having these documents drafted and updated on a regular basis is the ability of the client, or his designated representatives, to access the documents when the need arises.

This brings up the matter of where your client should store these documents for safekeeping, while at the same time making them accessible to the aforementioned designated representatives. I contend that the best place for the storage of these documents is not a bank safety deposit box. Why? Because, unless you have the foresight to also add your designated representative as a deputy on the signature card at the financial institution where the safety deposit box is located (and according to bankers I have contacted this is rarely done), at the time of your death your final instructions will be locked in a bank vault and not be accessible to those individuals charged with carrying out your wishes.

In addition to having your attorney retain a copy of your will, what are some other solutions to this problem?

• In those jurisdictions where it is permitted, consider filing your last will and testament with the Clerk of Court, or similarly positioned public servant, in the county where you live, and notify your executor or executrix that you have done so.
• Consider giving a sealed copy of your last will and testament directly to your executor or executrix. You might also give similar documents, such as your power of attorney, living will, etc., to those whom you have elected to act on your behalf under those circumstances in which the documents would be required.
• Keep a copy of your will in a plainly marked envelope with your other important papers at home.

As long as you have also followed one of the aforementioned recommended options, you can keep a copy of your will in your safety deposit box if that’s what it takes to give you peace of mind.

Is this issue really important enough to deserve so much attention? On May 26, 2010, my stepmother passed away. In spite of my having told her on multiple occasions not to file away her will in her bank lockbox, like many older clients set in their ways, she decided to ignore my advice. (After all, that is where my father had kept his, along with countless others of his generation.) What she failed to remember was that, when my dad died, she still had access to their safety deposit box. When she died, however, no one else had access to her box as she had no deputy assigned on her signature card. In addition, as I found out the hard way, stepchildren are not legally related to stepparents, unless legally adopted. Having been raised by a woman you have considered to be your mom since you were 5 years old carries no weight with the court.

Suffice it to say, the three weeks following my mom’s death were filled with frustration, red tape, and multiple phone calls to courthouses, funeral homes and cemeteries, all of which would not have been necessary if my mom had not filed her one and only copy of her will in her bank safety deposit box.

In the world of life insurance there is a saying: “No one buys life insurance unless they love someone or they owe someone.” I would like to think that, like the love demonstrated to loved ones by the purchase of life insurance, taking the time to record your final wishes on the last legal document you will ever have the chance to change shows just as much love.