

# *A Legal Update*

**Russell, McTernan and McTernan**  
839 Washington Street, Norwood, MA 02062

Once again we will be offering to our clients and area residents the preparation of a Will, Durable Power of Attorney and Healthcare proxy at reduced rates during the month of February (*Please refer to the back of this newsletter for details*) In order to help you make certain decisions, we have provided answers to many commonly asked questions about Wills, Trusts and Probate.

**Q. If I am married and have children, won't all of my assets go directly to my spouse. Or if my spouse predeceases me then I die, to my children, without the need to have a Will?**

A. When a married person dies without a Will leaving a surviving spouse and children, the assets of the deceased spouse's estate will be divided between the surviving spouse and the children. The survivor will receive half of the estate and the children will divide the remaining half. Most married people would prefer that everything go to the surviving spouse and then everything to the children only after both mother and father have passed away. This result is easily obtained in a properly written Will.

**Q. If both my spouse and I were killed in an accident, won't everything we have go to our children even if we don't have a Will?**

A. Yes, certainly everything would go to the children in equal shares, but if they are under the age of 18, the Court will appoint a guardian to care for the children and manage the funds. As each child reaches the age of 18, they will be entitled to their share of the estate free and clear. Since there is no Will, the court will appoint an individual to administer the estate. With a Will, the parents could name the best suited guardian for their children. They could establish a trust to hold and manage the funds for the benefit of the children until they are mature enough to manage the funds themselves. They could also appoint an executor of their own choosing to administer their estate.

**Q. What if I am single and do not have to worry about providing for a spouse or children, won't all my assets go to my closest relatives?**

A. The assets certainly would go to the closest relatives as defined by law. Those relatives may, however, not be the closest relatives to you personally or for other

reasons not the appropriate beneficiaries of your estate. In Massachusetts, if you die without a Will and have no spouse or children, your assets first go to your mother and father if they survive you, or your brothers and sisters equally if your parents don't survive you. If you have no surviving brothers and sisters your assets will go to your nieces and nephews equally. There are many reasons why this may not be appropriate and may be contrary to a person's wishes.

**Q. My wife and I own everything together, do we still need a Will?**

A. It is true that jointly owned assets will go to the surviving spouse automatically even if there is no Will. Of course this type of ownership does not address the problems that would occur if a husband and wife died in a common accident. There are other circumstances where there may be claims in the name of the deceased spouse alone that would not go to the survivor. These would include claims pending for personal injury or for inheritance. Any assets received as a result of those claims would be divided between the surviving spouse and the children.

**Q. If I do have a Will, will my estate avoid the probate process?**

A. Any property of any kind that is owned in the name of the deceased alone at the time of his or her death is probate property. This means that the transfer of ownership from the deceased to his or her heirs must be done in accordance with the probate process. Whether or not an individual has a Will at the time of death does not control whether there is a requirement for probate.

**Q. Should I do planning so that my estate will not have to be probated?**

A. Probate is simply the legal process of transferring ownership from the deceased to his or her heirs. The legal procedures and the time requirements must be carefully followed. The process begins with the appointment of an executor and the allowance of the Last Will by the probate court. The probate process is typically over approximately 12 to 15 months after an individual's death. The process ends when the final account for the estate is allowed by the probate court. There are fees and expenses involved in this process but they are generally small in comparison to the value of the assets in the estate, and are a debt owed by the estate and not by the heirs. Avoiding probate can save some time and expense for heirs. However, avoiding probate does require some loss of control of the assets during your lifetime. Although the probate process takes time and results in some fees and expenses, it generally resolves in an orderly and predictable manner.

**Q. Will a transfer of my property to a trust help avoid probate?**

A. Absolutely, but transfers to trusts and other types of transfers to avoid probate can result in a loss of control over the property. It is important to reach a balance between the benefit of avoiding probate with the costs of the planning and the degree that the transfer effects control of the property. In addition to avoiding probate, certain types of trusts are beneficial to reduce estate taxes and to protect property if long term care in a nursing home is required.

**Q. Will I have to use all of my savings and sell other assets to pay for my nursing home care?**

A. Long term care in a nursing home is expensive and requires everyone to pay individually unless they carry long term care insurance or are able to meet the financial eligibility guidelines set by Medicaid. Proper planning can provide protection of assets for a healthy spouse living at home and for children and grandchildren.

**Please feel free to call Russell, McTernan & McTernan if you have any other questions or would like to schedule an appointment to discuss any of these matters.**