

Utah Spirit

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Why ALL Adults Need a Will, Regardless of Age

A couple recently came to see me about preparing a will for them. Their need appeared to them to be very urgent. After all, they had just experienced a near disaster while returning from a lengthy trip.

During the landing of their last flight, the pilot had to take evasive and immediate action to avoid a catastrophe. This near-death experience caused the couple to examine their preparedness for death. As a result, they found that they had no Will and no other plans in place to dispose of or manage their estate.

We all know that someday we will leave this mortal life. Precisely when that will be, no one knows. But, most of us assume that day will come when we are very very old. Statistically, that is a correct assumption. Nonetheless, our mortal existence may end at any time and without warning.

If each of us were given notice that our life were to end soon, and if at that time our mental acuity were sound, then we would have time to prepare a Will and other estate documents. Unfortunately, such notice is rarely given or our mental condition is insufficient to be making testamentary decisions.

Young people rarely think that their life may end early. As a consequence, they rarely prepare a Will and related estate documents. It is usually only senior adults who get around to doing what they should have done years earlier. My column this month is directed to those younger adults who should be preparing for that eventual day when their mortality ends.

Probably the most frequent excuse I hear from younger adults concerning why they have not yet bothered to have a Will is that they have no estate to worry about. In part, that may be a valid excuse. Younger people usually have not had a lifetime to build an estate.

Another common excuse is that the house is the only substantial asset and it is held jointly in the names of a married couple. If one dies, the house is automatically vested in the surviving spouse.

However, what if both die together or nearly at the same? What happens to the house then? And, what if they have minor children? What happens to them and the house?

Most of us have definite ideas about how we want our estate to be distributed. We have even stronger ideas about who should have custody of our minor children. Yet, most young adults completely ignore the custody issue for their minor children.

Parents can nominate the person or persons who should have custody of their minor children upon the parents' death. Perhaps it should be a brother, a sister, a grandparent, or perhaps a close and trusted friend. Either way, it should be the decision of the parents, not a governmental agency or a court judge. Proper planning cannot avoid an untimely death, but it can avoid having minor children placed with someone not trusted or with whom no confidence exists.

Even if a younger couple has no minor children, they may all be legally adults, concerns may nonetheless exist about their ability to manage even a small estate.

If serious consideration is given about that possibility, a better solution is most likely. Perhaps the estate could be placed in trust and used for education, starting a business, or purchasing a home for the children. Without some sort of mature oversight, young adult children may simply "blow" their inheritance without regard to important, long-term needs.

Or, perhaps a child is permanently disabled and such an inheritance would be best placed into a Special Needs Trust that would supplement governmental assistance during that child's lifetime. There are other factors that most parents would consider if they took the time to do so. Unfortunately, this important aspect of their life is too often postponed until they are senior citizens. If they fail to reach that status, their children or other family members may suffer unintended and unpredictable consequences.

It is best to take steps now to put into place at least a simple Will that disposes of your assets as you wish and which will provide for custody of your minor children.

Finally, to those who have a trust, you still should have a Will so that any assets that may fall outside the trust can be poured over into that trust. That way nothing is left outside the trust and all dispositions of your property are made in accordance with your trust. Most importantly, do it now and do not procrastinate further.