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WHAT HAPPENS WHEN YOUR SPOUSE DIES?

DOES A WILL AVOID PROBATE?

By: Matt W. Zeigler, Esq.

What happens when your spouse dies? This is a very traumatic time for a family. You do not want to have to deal with problems regarding assets. You do not want to have to go out and find a lawyer to deal with probate issues. You do not want your assets tied up in Probate Court.

If you have a Revocable Trust and it is properly funded, your assets are protected from probate. Your assets will be available to you when needed, not tied up for a long period of time while the estate is in Probate Court and not used to pay probate costs. A Trust will allow you to protect yourself from federal and state taxes.

A Will in the State of Michigan must be probated unless all of your assets have been placed in the joint names of your spouse and yourself. Anything in your spouse's name alone must be probated. Even if there is only one asset in your spouse's name alone, that asset must be probated.

With no estate documents, your property must be in joint names to avoid probate.

If you both die at the same time, your estates will go through probate unless you have a trust. If this happens, your families must go through not only the trauma of your deaths, but also have to deal with the Probate Court.

If there are minor children, you also have the guardian issue. Unless you have a Will designating a guardian, the Court has the authority to designate a guardian. The person designated by the Court may not be the one you would have chosen yourself.

If there are no children, your property will be distributed under current law. This may not be the way you want it distributed. By having no estate documents, your desires cannot be carried out. A stranger will be making decisions for you and your children.

As shown above, without estate planning many problems can arise upon the death of your spouse, and many more problems if you both die at the same time.

To avoid problems regarding your assets, it is very important to make estate planning decisions. The best way to protect your assets and make decisions which will affect your children and yourself, is to have a Revocable Trust to avoid having to deal with probate (when the Trust is properly funded), a Will (to elect a guardian), a General Durable Power of Attorney (to help deal with issues during your lifetime) and a Patient Advocate for Health Care (to make decisions about your desires regarding life support).