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6 Common Excuses for Not Having a Will

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As a Trusts and Estates attorney I hear a lot of excuses why people have not executed a Last Will and Testament. The following are the most common and the reasons why they are not good excuses.

1. I don't have enough assets to need a Will.

The amount of assets you have has **no** bearing on whether you need a Will or not. What is important is whether you own **any** type of property at all at your death. If you own any assets at your death, including your home, a car or a bank account, even if it is a small amount property or number of assets, someone needs to have the authority to deal with them after your death. A Will allows you to appoint an Executor. An Executor is a person who, at your death, is given the legal authority to collect the assets of your estate, pay bills and distribute the remaining assets to your heirs. If you die without a Will

the State of North Carolina will appoint someone for you to collect and distribute your estate. Typically this is a court appointed lawyer or the first person to submit the Application for Administration of an Intestate Estate. The person the court appoints is very often not the person you would choose or trust if you were the one doing the selecting. Do not let the court decide who will collect and distribute your assets after your death. Make sure you have a Will so that you are the one choosing who will manage your estate after your death, not the court.

2. I don't need a Will because I own everything jointly with my spouse.

Okay, maybe you do own everything jointly with your spouse. What happens if you are in a major accident and you are both killed? Most married couples routinely travel together, often riding in the same

car, plane, train or boat. Both spouses dying in the same accident is certainly not unheard of. If that happens it does not matter that you owned everything jointly with your spouse because neither of the joint owners are alive. So who inherits the property? Who will be guardian of your children? These are issues that a Will can solve.

3. I do not need a Will because my spouse will inherit everything.

In North Carolina, if you die without a Will, the Law of Intestate Succession governs how your property will be distributed.

Under the North Carolina Law of Intestate Succession your spouse does not automatically inherit everything. If you have a surviving spouse and one surviving child or one surviving lineal descendent of a child (a grandchild or great-grandchild, etc.), your spouse

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gets one-half and your child/descendent gets one-half. If you have surviving spouse and two or more surviving children or lineal descendants, your spouse gets one-third and your surviving children/ descendants split the remaining two-thirds equally. If you have no surviving children but you have a surviving spouse and surviving parents, your spouse gets one-half and your parents get one-half. Do not leave it up to the government to distribute your property at your death. A Will can ensure that your spouse and other heirs will inherit exactly what you wish them to inherit, whether that is all or a portion of your estate.

4. My situation is simple so I don't need a Will.

Just about everyone claims to have a simple situation, but very rarely does it turn out to actually be a simple situation. If you have minor children you do not have a simple situation. If you are in a second marriage you do not have a simple situation. If you are in a second marriage with children from the first marriage you really do not have a simple situation. If you have family members who do not get along and are your heirs you do not have a simple situation. If you own a business you do not have a simple situation. If you own property in multiple states you do not have a simple situation. Do

not assume you have a simple situation. Everyone knows what happens when you make assumptions.

5. I don't need a Will because I do not have more than \$3.5 million dollars.

This argument is similar to the "I don't have enough assets for a Will" argument above. People that utter this excuse are making the assumption that Wills are only for those who will have to pay estate tax at death. First, never assume you will not owe estate tax at your death. I find that most people forget to add in the death value of their life insurance and the value of their real property when coming to the conclusion that they do not owe estate tax. If you are unsure about what if any estate taxes you may owe you should definitely consult a lawyer. Second, for all the reasons stated above, it is clear that a Will does much more than estate tax planning.

6. If I execute a Will that means I will die.

Believe it or not, I have actually had prospective clients say this to me. I hate to be the one to break the bad news but we are all mortal and at some point we will all die. I certainly believe it is better to plan in advance and not have to worry rather than leave chaos for my grieving heirs to

straighten out. A Will can help you organize your estate and make your wishes clear to those you leave behind. The peace of mind a Will provides is probably the greatest gift you can give your family after your death.

Conclusion

Hopefully, by this point it is clear that a Last Will & Testament is not a luxury item. It is a necessary and important part of life. If you are ready to execute that Will you have been putting off or would like to have your existing estate plan reviewed please feel free to contact our office at 919-571-4398 and set up an appointment.

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