The Law and You
Avoiding Will Substitutes

Wills and Trusts are the cornerstones of estate planning. Some individuals have both, others have just a Will. Some have nothing. Those with nothing are risking the distribution of their estate. But we will hold that discussion for another column.

There are advantages and disadvantages to having a Trust, but everyone should have a Will, even if they have Trust.

After carefully planning and considering how one's estate is to be distributed after death, they often mess things up by using "Will Substitutes."

These Will Substitutes are widely used, although most individuals have little or no understanding about the risks of using them. While these devices can avoid the need for a Will, they also have inherent shortcomings associated with them.

One of the most obvious Will Substitute is created when you specify a beneficiary on a life insurance policy. The named beneficiary on the policy receives the insurance proceeds directly without any need for a Will or for Probate. You can name one or multiple beneficiaries, and you can specify a different percentage of the life insurance proceeds for each beneficiary.

Similarly, beneficiaries can be named on retirement accounts such as 401(k) accounts or IRA accounts. And, you can specify equal or unequal amounts for each beneficiary. You can also specify a primary beneficiary and a secondary beneficiary; a secondary beneficiary being entitled to the proceeds only if the primary beneficiary is deceased at the time of your death.

Checking and savings accounts also permit you to designate a "pay on death" beneficiary. These are often referred to as "POD" accounts.

By designating beneficiaries on your various accounts, you can effectively transfer upon your death the liquid assets in your estate. However, great care and planning are required to avoid unintended consequences.

What if you want your child's share to go to his or her children (*i.e.*, to your grandchildren) in the event that your child predeceases you? In a Will, precise language is used to provide for that kind of distribution under those or any other contemplated events. On a life insurance policy or bank account, you are rather limited in how you can specify beneficiaries: usually primary and secondary.

Let me illustrate this point with a common example. Suppose that you list on your account the name of your child as your beneficiary. And further suppose that this child predeceases you. When you die, your account will go to that child's estate. In this scenario, your child's inheritance will likely pass to his or her spouse.

You may have intended your grandchildren to receive your estate if your child predeceases you. Yet, your son or daughter-in-law will be the likely recipient of your estate. The use of a Will can avoid this type of unintended distribution.

Managing your various accounts and changing beneficiaries or the percentages to each can be a real chore. More importantly, you may forget to change all accounts, and the distribution of your estate will not necessarily reflect your wishes. This is where a Will has the advantage.

If all of your accounts are simply included in your estate upon your death, your Will can effectively distribute your estate as you intended. When you want to or need to make changes to the distribution of your estate, you merely change one instrument: your Will.

Since your Will does not need to contain the details of your various accounts, you can freely change accounts without modifying your Will. Best of all, you do not have to worry about changing the list of beneficiaries on all accounts.

If you have only one account or one child, using a POD account may make sense. If, however, you have multiple accounts or several children, a Will may be easier to manage and to ensure that your intentions are fulfilled.

Before deciding not to have a Will, it is best to contact an Elder Law Attorney. To locate one, check with the National Academy of Elder Law Attorneys at (520) 325-7925 or at their web site: *www.naela.com*, or consult your local Yellow Pages under Elder Law.