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Lessons Learned: Contingency Planning – Without a Will

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“Do I really need to have a will?”

This is the question I hear most often, and it has come up again in relation to the COVID-19 crisis. The most common mistaken presumption is that your spouse will inherit everything automatically if you do not have a will. And since there is an unlimited spousal exemption for estate tax purposes, that incentivizes married couples to structure their estate plan that way.

The answer, though, is “it depends.”

For example, one of my clients did not have children but their parents were alive. If the client has passed under those circumstances, the first \$200,000, plus $\frac{3}{4}$ of any balance of the estate would go to their spouse, and the rest would pass to their parents. The rules of intestate succession (what happens if you do not have a will) can be complex and depend on whether you have living children, stepchildren, parents, and of course, whether your spouse is still alive at the time of your death.

So, the first reason you should have a will is to ensure that the heirs you wish to inherit your assets, for tax or personal reasons, actually end of inheriting those assets. Another reason is to name guardians for your minor children. If you do not have a spouse or you both pass away, these are the most important people to be named in your will.

And finally, intestacy cases can take much longer even during times when there is no crisis and the courthouses are open. During the current crisis, the probate courts are hearing only emergency matters. If you have a will, it will significantly speed up the disposition of your assets. It is also important to ensure that your will is properly prepared, executed, and the original maintained in a secure location where your heirs can locate it. A will is an important component of your contingency plan, together with the [healthcare proxy](#) and [durable power of attorney](#) that I have previously written about.

At the time of writing of this article, there is a bill in front of the Massachusetts legislature



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to allow remote notarization via video conferencing, which means you may soon be able to put your estate plan into place in your living room in front of your computer. Stay tuned for updates on that and other developments.

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