Can you meet estate planning goals with a simple will?

Farm & Family

BY SCOTT P. MILLER

PHOTO: FEVERPITCHED/ISTOCK/THINKSTOCK

AFTER we get to know new clients, nine times out of 10 we learn they have a simple will which gives everything to their spouse at death and then equally to their children.

In estate planning, our clients have numerous options, depending on their goals. Let's explore the option of having a simple will and if it is the appropriate estate planning tool in the following common scenarios:

Retired couple in town

Hank, age 78, and wife Winnie, 76, have three children, ages 51, 48 and 45. Hank and Winnie are both retired and live in town. Their estate planning goals are to:

- provide for the surviving spouse
- give equally to their children
- avoid probate

Hank and Winnie's net worth is $400,000 Their assets include: $75,000 in combined checking and savings accounts, $25,000 in investment accounts, $225,000 in retirement accounts and a $75,000 home.

Hank and Winnie's simple will meets two of their goals. If Hank passes away, all of the assets will go to Winnie. When Winnie passes away, the assets will go equally to the children, but there will be a probate proceeding. Probate occurs when the decedent owns $50,000 in assets individually or $1 in real estate.

To get all of the non-real estate assets out of the probatable estate, we added beneficiary designations on their investment and retirement accounts and made the cash and savings accounts payable on death to their children.

To avoid probate, we recommended that Hank and Winnie sign a transfer on death deed, which passes their home automatically to their children upon their death.

By using beneficiary designations and a TODD, their estate would avoid probate and give equally to their children.

Young families

Henry, age 35, and wife Wendy, 33, have two young children, ages 5 and 3. Henry and Wendy's goals are to:

- provide for the surviving spouse
- provide for their children
- pay for the children's college tuition
- protect their children's inheritance from creditors, lawsuits and other unintended beneficiaries

Their net worth is $750,000 and their assets include: $50,000 in combined checking and savings accounts, $50,000 in retirement accounts, $550,000 in life insurance and a $100,000 home.

Henry and Wendy's simple will does not meet their current goals. If they both pass away before their children turn 18, their children would each get a $375,000 check on their 18th birthday. Their children's inheritance would not be protected from creditors, lawsuits, divorce and, more importantly, themselves.

We recommended Henry and Wendy set up a contingent trust will. This estate plan puts the children's inheritance into a trust that is protected from creditors, lawsuits and other unintended beneficiaries.

Additionally, the trust provides funding for their children's college tuition until their 25th birthday. Once both children are 25, the trust gets divided equally into separate trust shares. At age 25, they are allowed to be co-trustees of their trusts and sole trustee at age 35.

Active farmers

Harvey, age 54, and wife Whitney, 51, have a 27-year-old farming son and 23-year-old nonfarming daughter. Harvey and Whitney's goals are to:

- provide for the surviving spouse
- give equally to their children
- allow their son to farm the land
- decrease taxes
- avoid probate
- protect the farmland from unintended beneficiaries

Harvey and Whitney's net worth is $2 million, and their assets include: $40,000 in combined checking and savings accounts, $250,000 in retirement accounts, $450,000 in life insurance, and a home and 160 acres valued at $1.26 million.

Harvey and Whitney's simple will does not meet their goals. There are no provisions allowing their son to farm during their incapacity; they are not taking advantage of tax credits; their estate is subject to probate, and the family farm is not protected from unintended beneficiaries.

We recommended Harvey and Whitney go with revocable living trusts. Their trusts will avoid probate and allow both spouses to use their Minnesota Estate Tax exclusion of $1.4 million, eliminating their estate taxes. Additionally, their trusts allow them to plan for incapacity by setting the rental rates for their land and equipment and allowing their son the first right to rent.

Upon death of the surviving spouse, the farmland will go equally to their children as tenants in common. Their farming son will be given the first right to rent and first right to purchase the land from his sister according to the terms of the trust.

Whether a simple will is right for you depends on your goals and assets. Contact your attorney to discuss your options.

Miller is an attorney at law with Miller Legal Strategic Planning Centers, P.A., Tyler. Call 507-247-4700 or email comments@millerlegal.com.