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## **Modern Legal Estate Planning: Protecting Your Loved Ones and Your Assets** *Why Having Just a Will Is Not Enough*

By Diane Rosenberg and David E. Sykes, Esq.

***NOTE:** This article and Estate Seminar is for general information purposes only and is not intended to replace the need for an attorney or other tax or investment professionals. All potential clients are urged to make their own independent investigation and evaluation of any attorney being considered. This disclosure is required by rule of the Iowa Supreme Court.*

One of life's many responsibilities is to plan for your estate to easily pass on to your loved ones when the time inevitably comes. Most people think a validly executed Will is all that is needed to ensure this takes place.

But a Will alone is **not enough** to avoid the potentially stressful and time-consuming Iowa Probate Court proceeding. A properly executed Trust that accompanies the Will, however, avoids probate and allows your assets to immediately pass on to your beneficiaries.

### **What Is a Will and Why Is It Necessary:**

A **Will** is a legal document that delineates to whom you wish to leave your assets and personal property when your time comes. The Will names specific **Beneficiaries** who will receive specific assets from your estate. One or more **Executors** of your choice is named to carry out the terms of the Will, pay any remaining debts from your assets; close your accounts; and, for example, sell your house, business or other belongings. Yet under Iowa statute, before the Beneficiaries can access the assets, your estate must go through probate proceedings and obtain formal approval by the probate court judge if only a Will is prepared.

If there is no Will, Iowa law then provides for your assets to pass onto your beneficiaries through the probate court process. In lieu of chosen beneficiaries, the Iowa statute provides a hierarchy of who receives your assets. This process is called "**Intestate Succession**" and it designates beneficiaries who may not be individuals of your choosing had your Will been in place.

## **What Iowa Probate Court Involves:**

**Probate** proceedings, which take place in court before a probate judge, are typically a time-consuming, public, stressful and often expensive legal process for a grieving family to maneuver if there is only a Will or no Will at all. Due to its complexity, an attorney is typically needed to process the legal requirements before the probate judge on behalf of the deceased's estate. This probate process is concluded once the probate judge approves the procedural process culminating in a court order stating the proceedings have been properly conducted and approved.

The length of time for this process to unfold is based on a variety of factors including the complexity of liquidating the estate's assets. Court documents are filed in court by estate legal counsel to authorize the required steps of the probate process. As part of this process, the attorney may also petition the court to authorize the liquidation of estate assets, such as a car, home, or business, should the Executor deem this the best course of action. Beneficiaries and estate creditors must also be located and properly informed of the probate proceedings.

Once the documentation process is completed, the attorney traditionally presents a complete accounting of the estate to the court, including all assets and debts, along with a list of named Beneficiaries. With court approval, the approved creditors are paid, and then the court authorizes any remaining assets to be dispersed as specified to the Beneficiaries. This process can take anywhere from 3 to 12 months or more to complete, depending on the complexity of the estate.

Probate proceedings can be expensive as well. By statute, probate attorneys typically charge approximately 2% of the gross value of the estate. As circumstances dictate, the estate attorney can also petition the court for additional "extraordinary legal expenses" that the estate may require. Court costs and publication fees are also paid by the estate.

## **Why a Trust Should Accompany a Will:**

With effective planning, a Will along with a properly executed **Trust**, can completely **bypass** Iowa Probate Court and all its legal hurdles and expenses. The Trust is initially **Revocable** (can be changed) during the lifetime of the creator, and then becomes **Irrevocable** (cannot be changed) upon the passing of its creator. The creator of the Trust is called the **Settlor** and usually during their lifetime also serves as the **Trustee** for the Trust. When he or she passes, the estate is typically then managed by a prearranged **Successor Trustee(s)** who make sure the Trust assets are properly administered and distributed to the **Trust Beneficiaries**.

An attorney is generally not necessary to distribute the estate after one passes when a Will and Trust are already properly in place. In addition, the legal cost of proper legal estate planning with a Trust is typically much less time consuming and expensive than the cost of the probate court process.

**Examples of Iowa Estate Probate Costs with or without a Will and not including a Medical Power of Attorney or Living Will (Probate required by law):**

Gross estate value:	<b><u>\$100,000</u></b>	<b><u>\$500,000</u></b>	<b><u>\$1,000,000</u></b>
*Statutory Legal fees at 2%	\$ 2,000	\$10,000	\$ 20,000
*Plus court filing fees	\$350	\$350	\$350
*Plus publication fees	\$50	\$50	\$50
*Plus extra legal fees	?	?	?
*(Approximate costs)			

**Examples of Estate Legal Costs with Will, Trust, Medical Power of Attorney and Living Will (Probate avoided):**

Gross estate value:	<b><u>\$100,000</u></b>	<b><u>\$500,000</u></b>	<b><u>\$1,000,000</u></b>
Approx. attorney fees*	\$750	\$1000	\$1500 to \$2000
(*subject to change)			

**Additional Components of Modern Estate Planning:**

Two other documents are considered an important part of comprehensive legal estate planning.

**Medical Power of Attorney:** A Medical Power of Attorney allows you to choose a medical advocate to make decisions on your behalf should you have an illness or injury that prevents you from temporarily speaking for yourself.

While spouses, parents, or adult children are often provided with that authority without a Medical Power of Attorney in place, this authority is not universally recognized, and some hospitals may have procedures that may make this process more difficult in the absence of this document.

A Medical Power of Attorney can also allow you to authorize significant others or designated family members or friends not normally granted that authority to speak for you.

**Living Will:** Modern medical intervention can provide valuable life-saving support for those with life-threatening illnesses and injuries. But if there is no realistic medical chance of recovery, families may be forced to make difficult and often gut-wrenching decisions if they have not had any input from their loved ones on what their wishes would be.

A Living Will is a document that clearly outlines an individual's wishes if there was no chance for recovery and authorizes one's medical advocate(s) to express those desires, such as the removal of life support, to the medical staff. A Living Will provides clear direction to family members and eliminates some of the burden of those decisions in a time of deep distress and grief.

These four legal documents are recommended as part of modern, comprehensive legal estate planning and can guide and protect you, your family and loved ones, and your estate during difficult times. In some cases a **Durable Power of Attorney** may also become an additional necessary legal document during the lifetime of the Settlor of the Trust if the Settlor is in ill health or cannot serve as the Trustee of the Trust for any reason.

**About Attorney David E. Sykes:**

David has been practicing law in Iowa since 2008 and is a member of the Iowa Bar Association. He is a former Maryland attorney and past member of the American and Maryland State Bar Associations. In addition to his general practice and legal estate planning services he is involved in numerous environmental litigation cases representing rural neighbors against infringing CAFOs in Iowa. One such CAFO case of David's and his litigation co-counsel is now before the Iowa Supreme Court in an anticipated landmark decision.

David is the founder, president and legal counsel for the Noah's Ark Animal shelter; a founding director, past president and legal counsel for Jefferson County Farmers & Neighbors, Inc. (JFAN), and more recently, the legal counsel for the Jefferson County Food Initiative, Inc. and the Fairfield Pickleball Club, Inc.

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