A Test of Wills

When it comes to preparing for the inevitable,

many estate plans are found lacking.

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As Ben Franklin said: Nothing is certain but death and taxes.
More than 200 years later, our least favorite experiences are still inextricably linked. "The task of estate planning may not be pleasant," says Thomas Petrone, with some understatement. "None of us like to confront the realities of our own mortality and payment of substantial taxes, but it is necessary."

Just do it

As a Certified Life Underwriter and president of Thomas Petrone Associates-Guardian Insurance in Princeton, Mr. Petrone is an exception to that rule — but then it's his business to think and talk about things the rest of us would rather not.
And he's not alone. Lawyers such as Kester Pierson and Valerie Howe of Mason, Griffin & Pierson, PC of Princeton and certified financial planners like Jeffrey Sprowles, president of Mercadien Asset Management in Hamilton, spend much of their time trying to convince people to plan for the inevitable. Despite their efforts, and the constant chorus of reminders in magazines like SmartMoney and Forbes, people still fail to plan. Or, if they plan, they make simple mistakes that make all their work go for naught.
And it's not as if real-life examples of what could happen are scarce. It's hard to think of a time when wills — and living wills — haven't made the news. Today, there's the Florida brouhaha over Terri Schiavo's continuation/termination of care — something that might have been prevented had she made her wishes known more clearly.
Locally, a few years ago, Doris Duke, the "poor little rich girl," and her estate were not only the hottest news topic, but proof that the tabloids don't make everything up.
Given the different professions they follow, the basic advice given is remarkably uniform and simple:

- Make a will
- Assign a power of attorney
- Make a living will

If you want to add a fourth, make a medical power of attorney.

For "the people we love"

To those who put off making wills until they have something to leave, Mr. Petrone argues that estate planning is for everyone, regardless of the size of the estate. Even

the simplest can involve complex issues, including outright inheritance vs. trusts; treating children equally or differently; the age at which children should inherit; managing the decedent's affairs after death; guardianships for children; and complicated family situations, such as multiple marriages, children from different marriages or persons suffering from disabilities.

Complex though these family considerations may be, complicated assets — business interests, collectibles, investment accounts and retirement plans — add another level of difficulty to the process. In developing an estate plan to ensure that these assets pass to the intended beneficiaries while avoiding tax consequences, you leave what Mr. Petrone calls "an eternal testament to our families and loved ones that we cared enough about them to address the necessary issues."

"Surely," he concludes, "the people we love deserve no less."

Not just about taxes

Mr. Sprowles agrees with Mr. Petrone on most points.

"Most people with property and all people with minor children should have a will," he says. "Without a will, property is transferred by state laws, which may not be the best way to distribute one's property."

Two other categories of people who should take action are those "with strong feelings about the 'pulling the plug' issue" and those with financial obligations that may not be fulfilled before they die. The first should have a living will, the latter an insurance policy, which can also be a means of providing heirs with a measure of liquidity while they adapt to life without the deceased's income.

The tax issue, though, is a straw man in Mr. Sprowles' opinion, not the bogey man conjured by politicians to terrify voters. Unless your estate is worth more than $1 million, he explains, there is no federal estate tax. Even at those levels, there is no tax for transfer to spouses.

Next year, under President George W. Bush's Economic Growth and Tax Reform and Reconciliation Act (widely known as EGTRRA), that exclusion increases to $1.5 million. By 2009, it will be $3.5 million and in 2010 the tax goes away entirely.

New Jersey's "death taxes" are fairly modest. As Mr. Petrone notes, an inheritance tax applies to property left to beneficiaries other than a spouse, child, grandchild or charity. New Jersey also has a separate estate tax that works similarly to the federal tax, with an exemption of $675,000.

At the federal level, however, unless legislation is passed to extend the repeal, the estate tax comes back at 2003 levels (only the first $1 million exempt) in 2011. For those wealthy enough to be affected by the federal tax, this makes the law complicated and, in Mr. Sprowles' opinion, "immoral" (see separate story, Page 10).

Estate planning is not just about taxation, says Mr. Sprowles. It is a way of modeling — financially and legally — what will happen when somebody dies. Although this exercise is one just about everyone should do, Mr. Sprowles concedes that it's more likely to be done according to how wealthy the person is and how near to death she is. As evidence, he cites studies that show the average age of a probated will is less than three years.

Mr. Sprowles suggests that, rather than waiting until you need — and can afford — the

full range of legal, accounting and insurance services, you should take action appropriate to your age. "Spending a lot of time and money on an elaborate will at age 27 is probably not a good use of time or lawyer fee, unless the 27-year-old person is extremely wealthy, very sick or prone to suicidal thoughts," he notes. "On the other hand, a 95-year-old with a malignancy, $10 million dollars in a brokerage account and a business that employs three of his seven children and two of his three ex-wives will save his family a significant amount of death taxes and family discord by investing time and money in a well-thought-out estate plan."

That's when instruments such as wills, trusts, charitable foundations, family limited partnerships and buy-sell agreements should be drafted by an attorney specializing in estates and trusts.

The devilish details

Unfortunately, many heirs who have been assured that the "estate issue" has been settled, discover that the plans can't be carried out as the deceased had intended. What if you die before your heirs are old enough to handle the responsibility? Say you have a son who predeceases you, and your bequest to him is divided between his wife and his daughter, who will get her share when she turns 18. The mother may worry that there will be no way to control her or influence her to continue her education. A trust for the daughter could allow the mother to influence how and when it is distributed.

"Trusts also help if you have problem children," Mr. Pierson explains. "A client might not want his spendthrift son to waste his inheritance, so he'll set up a trust."

Or, as Ms. Howe points out, what if you have a child with special needs. In cases such as these, she says, "trust planning is an important way to insure that your heirs are taken care of, not just to avoid taxes." A direct inheritance, she adds, could disqualify someone with special needs from government or other benefits they're receiving, where a trust would provide supplemental income, over and above their benefits.

Some plans, according to Ms. Howe, are flawed from the outset, often for what seem the best of reasons.

"A lot of people name multiple agents — executors, powers of attorney — because they don't want to hurt someone's feelings by leaving them out," she explains. "I try to talk them out of it, but they say, 'Oh, the children have always gotten along fine. There will be no trouble.' Then, well, you know what happens."

Rather than leaving a loving family, whose members are financially and emotionally secure, they've laid the groundwork for endless lawsuits that benefit none, and nowhere, Ms. Howe notes, is such acrimony more likely than in living wills, which are often thought of as "right to die" documents, but can just as clearly state that you do want to be kept alive by any means available. "That's one case," she emphasizes, "where you really don't want a fight!"

This doesn't mean you ignore those people not chosen as executors. Instead, you should make sure they are involved, both by discussing the terms of the will, and as backups — "successor agents," in legal parlance — in case something prevents the executor from serving.

"I always advise people to name two backups," Mr. Pierson says, "and to review their arrangements on a regular basis." That's because, often, otherwise airtight

arrangements are undone simply by the passage of time.
"It's not hard to forget what you've put in your will," Mr. Pierson says. "Perhaps you named your sister and brother-in-law as guardians for your minor children, but they've since divorced.
"I've also known cases where people intended to divide everything equally, forgetting that they had named one child the sole beneficiary of an IRA or 401(k) that comprises most of the assets."

Safety in numbers

Once you have a good plan in place, what do you do with it?
Many people put them in safe places — places where their heirs can't find them. Ms. Howe and Mr. Pierson advise making copies and leaving them where they can be used, not just with an attorney, but also with the executor and physician, especially if you have a living will.
The best-laid plan in the world will fail, if no one can act on it.