

LIFE GOALS: LONGEVITY BY BETH A MCDANIEL

You may not know of my fascination with longevity, often simply defined as a 'long life.' Granted, I'm not interested in just any long life, but what a popular author/podcaster recently described as a 'long, vibrant, connected, happy, healthy, and purpose driven life.'

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A FEW THOUGHTS ABOUT INHERITANCE. BY BETH A. MCDANIEL



In a syndicated 'Ask Amy' column, dated September 3, 2023, a reader shared her distress over her father-in-law's informing her husband two years prior that he was being 'disinherited' in favor of his sister, who served as his full-time caregiver and needed his financial support. The reader expressed her difficulty in coming to terms with this decision and sought advice.

I have many thoughts surrounding the issue of inheritance. First, inheritance is a privilege, not a right. Everyone has the right to designate their estate beneficiaries and distribution as they see fit.

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THE IMPORTANCE OF A LAST WILL AND TESTAMENT BY BETH A. MCDANIEL



As per a request, I will take time this month and in future newsletters to discuss the significance of various estate planning documents. This month, we'll begin with the Last Will and Testament (commonly referred to as a "Will")

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Several factors have contributed to this fascination. First and foremost, I reflect upon my late mother-in-law and late father-in-law's final years. My husband's birth, a surprise that arrived eighteen years after his sister (with three brothers in between), came later in their lives.

Coincidentally -- and not what we planned -- our own two children were born later in our lives. During our children's infancy and preschool years, my in-laws were unable to help and support us as they themselves required assistance and care.

This circumstance served as a reminder that my husband and I must take proactive steps to keep active and healthy as it is likely that our children may not be available to assist us during our later years due to their having their own young families.

Another vivid memory is that of my paternal grandmother's final decade spent in a skilled nursing facility, following a debilitating hip fracture and stroke. I would not wish a short stay in a skilled nursing facility on anyone, let alone a decade.

In my professional capacity as an attorney, I frequently witness the crippling financial toll long-term care expenses have on individuals and families. This has reinforced my unwavering belief in the importance of optimizing our health, starting today, with the aim of postponing the need for long-term care assistance as far into the future as possible.

Recently Netflix unveiled a limited series titled 'Live to 100: Secrets of the Blue Zones.' In this captivating series, host Dan Buettner embarks on a journey to regions of the world where people achieve the...

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...remarkable milestone of age 100 at the highest rates. I recommend the series as I think it offers invaluable insights to all.

Expect more from me on the topic of longevity. In the interim, here's to your pursuit of long, vibrant, connected, happy, purpose-driven, health.

CONT: A FEW THOUGHTS ABOUT INHERITANCE.

Here, the father-in-law proactively conveyed his wishes to his son. By doing so, he may have averted a future 'will contest' initiated by his son based upon his suspicion of undue influence brought on by his sister. Likewise, sharing this information with his son allows him to process the information and his emotions prior to his father's passing, hopefully preventing any posthumous resentment towards his sister for blindsided him with the news.

It is not uncommon for a caregiver child to be 'compensated' following the parent's death, especially as the funds may likely be tied up during the parent's lifetime.

In my view, inheritance is a multifaced

topic. At least one study shows that receiving an inheritance brings a surge of happiness, which is likely short-lived as at least one other study shows that few people retain any substantial portion of their inheritance one year later.

It is intriguing that the estates where the inheritance was unexpected (and the inheritor likely did not have a relationship with the relative who died) generate the most phone calls to our office with individuals impatiently inquiring about the timing of their inheritance. Perhaps this stems from the apprehension that an unexpected windfall could easily dissipate.

This year, we have encountered our...

CONT: A FEW THOUGHTS ABOUT INHERITANCE.

...first probate cases involving 'inheritance advance loan companies' in which an heir takes out a loan with a company, with ridiculous terms, in exchange for the company's directly receiving a portion of the inheritance from the estate. If I were to ever represent such a beneficiary, I would encourage patience and not "spending" the inheritance before it is received.

In my perspective, inheritance is not just about money, it is often a final expression of love. While I can appreciate disinheritance due to estrangement, I often encourage estate planning clients to think twice about 'disinheriting' a child solely because another child or children 'need it more', as may unintentionally punish the disinherited child for being successful. As someone wiser than me pointed out, this action can have listing, multi-generational...

...repercussions.

When it comes to more distant relatives, the children's story of 'The Little Red Hen' often comes to my mind. In that story, the Little Red Hen repeatedly asks for help from her friends who provide excuses as to why they are too busy to help. In the end, the friends show up to reap the fruits of the Little Red Hen's labor and the Little Red Hen turns them away. In short, I think it is entirely acceptable for someone like an aunt to allocate her estate to those nephews and nieces with whom she shares the closest bond, rather than distributing it equally among all nephews and nieces equally, regardless of the nature of their relationship.

Inheritance is undeniably intricate and warrants thoughtful consideration. On the recipient's end, it's wise to maintain modest expectations and keep any sense of entitlement in check.

THE IMPORTANCE OF A LAST WILL AND TESTAMENT

A Will is an optional legal document. In its absence, state law determines asset distribution and who has standing to be appointed as administrator of the estate. Nevertheless, a current Will provides substantial value:

- It allows nominating your preferred executor.
- It allows selection of beneficiaries (including charities and non-family members);
- It provides an opportunity to nominate a guardian for any minor children; and
- It allows disposition of personal property according to your wishes.

A Will offers peace of mind to surviving loved and a path forward. Further, a Will can address unforeseen circumstances:

- It can protect a beneficiary's share, should the beneficiary become disabled after the Will is executed.

- It can give your personal representative discretion to hold a beneficiary's share in trust if the executor determines it is in the beneficiary's best interest due to circumstances like bankruptcy, pending divorce, incarceration, chronic homelessness, or substance abuse.
- It can provide direction for handling a beneficiary's share if the beneficiary is missing (versus having to wait seven years before the beneficiary can be declared dead).
- It provides an alternate distribution plan, should a key beneficiary predecease, or if the first nominated personal representative is unable or unwilling to serve. Likewise, a Will can state those individuals whom you would not want to serve as personal representative under any circumstances.

Additionally, a Will can create...

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...opportunities for estate tax planning opportunities for the survivor spouse.

In our state, a valid Will must be executed in the presence of two disinterested witnesses. If there was only one witness, or one of the witnesses is 'interested' in that he or she stands to gain more under the Will than he or she would have otherwise been entitled if there were no Will, the Will is invalid. Of course, a draft Will found on a computer is not a valid Will.

It is important to have a Will even if you anticipate all your property will pass under a Living Trust or via beneficiary designations. Keep in mind that under state law, disinherited relatives who would have otherwise inherited had you not had a Will are entitled to notice of

the probate proceedings and thus can potentially contest' the Will.

The original Will should be stored in a safe place and the named personal representative should know its location. While it is possible in our state to admit a copy of a Will to probate, it involves additional burdens, such as obtaining written statements from the witnesses to the Will and approval from those named in the Will before it can be submitted to probate. Thus, safeguarding the original Will is vital.

Safe places to keep the Will include a safe deposit box at the bank (with the nominated personal representative as a signer on the box), home safe, or in the same location as other important papers. Some older law firms store their client's original Wills in vaults, but this is less common.

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Alternatively, in our state, it is possible to 'store' original Wills with a county Superior Court. Here, for a small fee, the Court will store your Will in a sealed envelope. During your lifetime, you (and only you) can view or remove your Will without a court order. Following your death, upon presentation of a certified death certificate and the required fee, the Will can be converted to a public filing, viewable by everyone and available for probate. Probating the Will in another state or county will require a court order to release the Will.

For those who want to keep their Wills' terms private until following death, the Court's repository is a suitable choice. It is important to inform a trusted individual your original Will is in the Court's repository.

Lastly, it is worth noting that the dramatic 'reading of the Will' events in an attorney's office as portrayed in books and movies are fictional. In reality, heirs obtain a copy of the Will through the probate attorney's office or from the Court.

If you have questions about leaving property to a relative, guardianship/conservatorship, or would you like to discuss your estate plan, please contact our client care specialist, **Margo Passeau**, directly at **(425) 296-3121** or by email at **margo@bethmcdaniel.com**
