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Leaving a legacy

By Sharon Frieling

As one advances in age, one becomes aware of the need to make out a will. This is especially important for elderly married couples, to ensure that on the demise of one, the other will be provided for. In such circumstances, most couples prefer mutual wills. That is, two wills that are exactly the same, the only difference being the beneficiary. In the will of the husband, the beneficiary named is the wife. In the will of the wife, it is the husband.

In addition to wanting to provide for one's spouse, one also wants to provide for one's children. It is task of the lawyer to write a will that is balanced between the needs of the spouse and the needs of the offspring.

The most common way to ensure the well-being of one's spouse and the rights of one's children is to leave everything to one's spouse but in a limited form. The spouse can only use the income from the capital or the properties but cannot sell or dispose of either. He or she can eat the fruit but cannot touch the tree itself, so to speak

There are many variations on this theme.

For example, one can leave everything to the children

-- residence, properties, business, cash -- provided that the surviving spouse will receive a monthly income determined beforehand and the right to reside in the family home for the rest of his or her life. Such a will is based on the premise that the surviving spouse will be ensured of an income for the rest of his or her life, and the children will eventually inherit the entire family estate.

If the surviving spouse remarries, the will should be based on a separation of assets. It is the best way to prevent misunderstandings and legal wrangles in the future.

Another important point pertaining to a mutual will is that it can be changed only if the other partner is officially informed because such a change will automatically cancel the mutual wills of both partners.

It is also important to make out a will that is not open to interpretation. Wills that are open to interpretation are the main cause of litigation and unnecessary family disputes.

The writer is an attorney, expert in family and inheritance law. ■