Wills, Trusts and Debt. Oh, My!

Today's Money $ Tip is shared on behalf of Leslie Boden, Money Management Counselors (Door and Kewaunee County), https://www.moneymanagementcounselors.com/

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Wills, Trusts and Debt. Oh, My!

Before spring comes and we start to think about getting outdoors, March is an excellent time to review your Estate Plans, Wills, and Trusts. This month's newsletter covers the question of what happens to debt when we pass away. Online Wills, A guide on document storage, and a small quiz testing your Will, Trust, and Estate knowledge.

Some long-term financial planning is best served under the guidance of an attorney. All too often, I run into situations of financial hardship due to poor or misinformed long-term planning. Can attorneys be cost-

prohibitive for some people? Yes, but there are organizations like our local Door County Legal Aid Society for those who qualify. You have to ask yourself the penny-wise pound-foolish question. The article "Making a Will in the COVID-19 Era" answers this dilemma well.

Because it's always more than *JUST* about the money...

Sincerely,
Leslie Boden
Director

How your parents' debt could outlive them

By LIZ WESTON of NerdWallet

Many people believe one of two common myths when a parent dies in debt, says Chicago estate planning attorney Michael Whitty. The first myth is that an adult child will become liable for their parent's debt. The second myth is that they can't. Adult children typically don't have to pay their parents' bills, but there are exceptions. And even when a child doesn't have to pay directly, debt could reduce what they inherit.

Debt doesn't simply disappear when someone dies, Whitty explains. Creditors can file claims against the estate, and those claims usually have to be paid before anything is distributed to heirs. Creditors also

are allowed to contact relatives about the dead person's debts, even if those family members have no legal obligation to pay.

WHEN YOU CAN AND CAN'T BE HELD PERSONALLY RESPONSIBLE

Generally, family members don't have to use their own money to pay a dead relative's debts unless they:

— Co-signed a loan, were a joint account holder or otherwise agreed to be held responsible for the debt.

— Are the surviving spouse and live in a community property state or a state that requires surviving spouses to pay debts such as medical bills.

— Were legally responsible for settling the estate and didn't follow state law.

For example, if you're the executor of your parent's estate and distribute money to yourself or other heirs before paying off creditors, the creditors could sue you to get the money back.

SHOULD YOU FEAR 'FILIAL RESPONSIBILITY' LAWS?

More than half of the states still have “filial responsibility” laws on the books that technically could require adult children to pay their impoverished parents’ bills, says estate and elder law attorney Letha McDowell of Kitty Hawk, North Carolina.

These laws are holdovers from a time when debtors prisons existed, says McDowell, who is president of the National Academy of Elder Law Attorneys. Their use has faded since the 1965 creation of Medicare — the health coverage program for people 65 and over — and Medicaid, the health coverage program for the poor.

Filial responsibility statutes are rarely enforced, although in 2012, a nursing home chain used Pennsylvania’s law to successfully sue a son for his mother’s $93,000 bill. Some legal experts have predicted more such lawsuits as long-term care costs rise, but so far that hasn’t materialized, McDowell says.

HOW CREDITORS GET PAID – INCLUDING MEDICAID

If someone dies with more debt than assets, their estate is considered insolvent and state law typically determines the order in which the bills get paid.

Legal and other fees for administering the estate are paid, as well as funeral and burial expenses. A temporary living allowance may be provided for dependent spouses and children, depending on state law. Secured debt such as mortgages or car loans must also be repaid or refinanced, or the lender can claim the property. Federal taxes and other federal debts have a high priority for repayment, followed by state taxes and debts, Whitty says.

If Medicaid paid for someone’s nursing home expenses, for example, the state can file a claim against the estate or a lien against the person’s home, McDowell says. Medicaid eligibility and recovery rules can be complex and vary by state, which is why it can help to consult an elder law attorney if a parent may need Medicaid to cover nursing home bills, McDowell says. She urges planning appropriately “to make sure that your family doesn’t wind up without a house.”

The last debts to be paid include unsecured debt, such as credit card bills or personal loans. If there's not enough money to pay those debts, the creditors get a share of whatever is left. Only after creditors are paid in full can any remaining assets be distributed to heirs.

WHAT TO EXPECT WHEN COLLECTORS CALL

Often, creditors won't even file a claim against an insolvent estate if there's little hope they'll collect, Whitty says. But that doesn't mean they won't ask surviving family members to pay.

Legally, debt collection agencies are allowed to contact a surviving spouse or executor to request payment and to contact relatives to ask how to reach a spouse or executor. However, collection agencies aren't allowed to say that the debt is legally owed by a survivor if it isn't, Whitty says.

"One of the reforms that has been noticeable over the time I've been practicing is that collection agencies now must affirmatively state that the surviving family members are not obligated on the debt," he says.

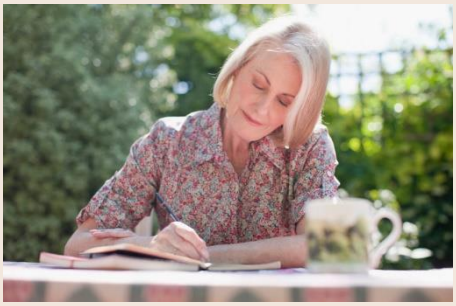
Of course, collection agencies aren't known for always following the law. If you're contacted by an unethical or abusive collector, consider filing a complaint with the Consumer Financial Protection Bureau. You can do that, and learn more about your rights under the Fair Debt Collection Practices Act, at the CFPB website.

Making a Will in the COVID-19 Era

Before you consider the DIY route, know all the facts

by Amanda Singleton

The coronavirus pandemic has many people deeply concerned about their health and wondering what will happen to their loved ones if they contract the virus. For so many, the eventuality of death seems more real and more imminent than ever. Because of this, sales of online wills and legal documents have absolutely exploded over the past few weeks.



I'm a lawyer. I want people to use lawyers. But, most of all, I want whoever is considering making an online will or trust to have all the information — not just an advertisement from a form document website or a stern "Don't do it!" from someone in the legal community. Please take this advice to heart and do what you decide to be in your best interests.

Full disclosure: Professionally and personally, I am no fan of online legal documents. Here are just a few reasons why:
My mother (who did not expect to die at age 61) made an online will. I spent a year of my life having to be an executor for her tiny estate. It was stressful and so hard to manage when my heart was already broken and I was totally burned out from caregiving for her through cancer. It's part of the reason I began to practice estate planning and probate — so I could help other people avoid what I went through.

Beware of costly errors

Generally, people use these websites because they want to save money. That is a lousy reason! What happens, often, is that you may save a few hundred dollars by creating an online will or trust. Then, your family has to spend thousands to go through the administration in probate court (often, when it could have been avoided altogether), or even worse, litigate because there is something wrong with the document. I heard an attorney at a Bar Association event joke that online estate-planning forms bought him his sports car. The joke was in poor taste,

but the point is accurate. These forms create a lot of problems. When one has an error or misses something important, things are certain to go badly in court.

I've represented clients whose loved one made an online will that left no other choice but an extended court case to close up their loved one's final affairs. Last month, I finally completed a probate that took several years because my client's mom made an online will. All she owned was a small-value house. Her kids had to go out of pocket to pay my law firm's fees. It was money that they didn't have to spare but had to spend to avoid losing the house altogether. It all could have been prevented with some simple deed work. But template websites won't tell you that.

Forms become outdated — fast

Another tick in the con column for these online form services: It is very difficult for them to stay current with changes in state law. Every year, the legislature may tweak its laws governing probate, estates, trusts, advance directives and other important documents. If your form is outdated, the form will likely fail in court.

There is truly no substitute for advice from a licensed professional. Online forms don't give front- or back-end legal advice on how to structure assets or beneficiary designations, how to minimize taxes, what the new SECURE Act is and what it means for your retirement accounts, how to avoid probate, how to protect your disabled spouse or child, and so on. The websites that sell these forms very clearly state that no legal advice is being given. They are one-size-fits-all products. Yet, no two people are the same.

Attorneys are still open for business

Across the country, estate planners and elder law attorneys are open as an essential service and adapting to the current circumstances and our clients' specific needs. We've been coming up with creative solutions to

serve people who want a will in case they are impacted by this virus. We are working longer-than-usual hours, checking in on our isolated older-adult clients, and holding “no-contact, drive-up” will signings. Trust that the attorneys who’ve been established in this area of practice (not those who see the coronavirus as a business opportunity and are trying to capitalize on it by suddenly advertising themselves as estate planners; make sure you ask any attorney how long they’ve practiced in this area) are working double-time to help quell some of the very deep, reactive fears many of us are experiencing.

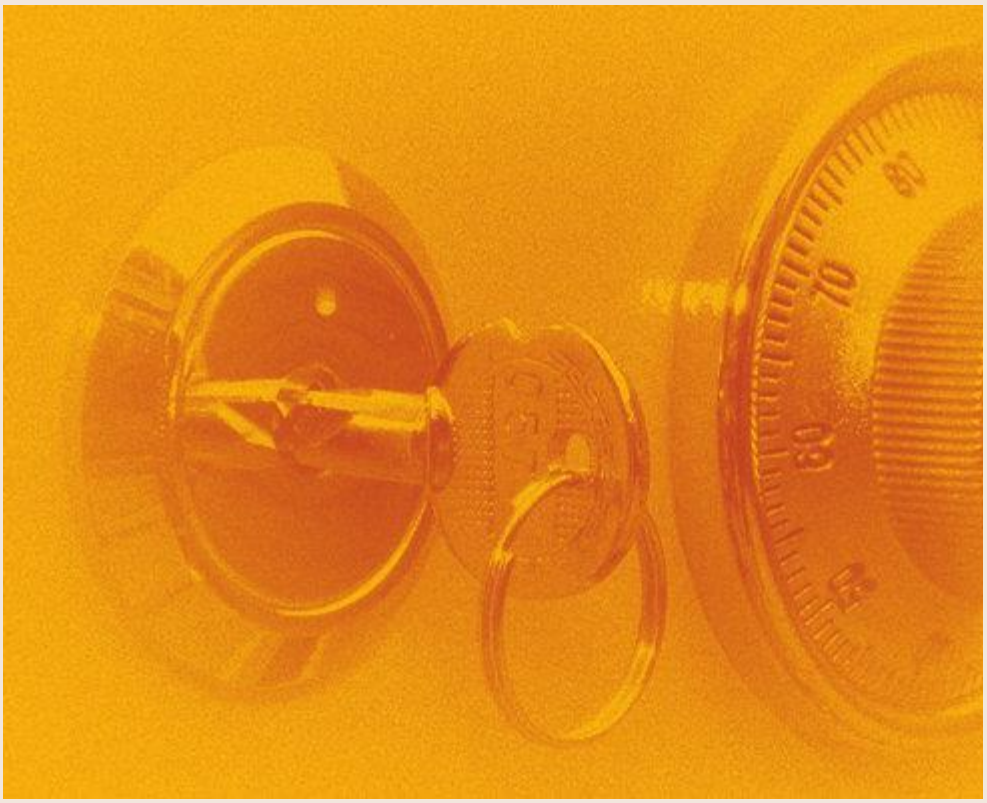
Also, be aware that most attorneys will not comment on or give their blessing for an online form you make. So, it’s not likely that you can call one and ask them to tell you if your template will is OK. Many attorneys would probably encourage you to create a new one, with licensed counsel, as soon as possible, in conjunction with a well-designed estate plan.

Now, here’s the rub: If you can’t leave the house, feel the desperation of not having your will done and believe that one of these online forms is better than nothing, make the decision you feel is best. You know the drawbacks now. But, if a DIY will gives you comfort in a time of great uncertainty, you may decide that is enough to outweigh the risks.

I wish you discernment in your decision-making, peace of mind in uncertain times, and health and longevity to you and yours.

Test Your Wills, Trusts and Estate-Planning Smarts

Learn the difference between wills and trusts and discover the risks of transferring your assets while earning AARP Rewards today.



Storing Wills and Trust Documents?

After you've made a last will, one question many people have is where to store the document. Before you decide to store it in a plastic bag in your freezer, one thing to note is that you have options for where to safely store your will.

by Stephanie Morrow

One of the most difficult, yet important, decisions one can make is making a last will and testament. A will is a signed and witnessed written document that specifies, among other things, who is to receive their last possessions at the time of death. This can include real estate, bank accounts, and personal belongings. When the person who made the will passes away, an executor is appointed, whose duty it is to ensure the terms of the will are carried out.

After you've created a will, the next decision is where to store the will so that your executor can easily find the original document when needed. Because the executor will need the original will to handle your affairs efficiently, a will should be stored in a safe and accessible place and the executor should know exactly where it is kept.

Not being able to get a hold of the original copy of your will can end up being a nightmare for your beneficiaries, both emotionally and financially. Below are ways to store the original copy of your last will and testament so that it is accessible to your executor after you are gone:

Safe Deposit Box

Many individuals believe the safest place to store a will is a safe deposit box. However, different states have explicit laws as to when a safe deposit box can be opened upon the owner's death and what documentation is required to open it. For example, in

Virginia, a bank will allow a safe deposit box to be opened for the purpose of locating a will, but other states require the executor of the will or family members to obtain a court order to open the box. If you do choose to use a safe deposit box to store your will, make sure your executor and beneficiaries know exactly where the safe deposit box is located, and don't forget to grant the executor the legal authority to take possession of the will upon your death.

Attorney

Having your attorney keep the original copy of your will can be beneficial if you are sure you will be retaining the same attorney or law firm for the remainder of your life. An attorney is obligated to keep a client's will confidential and may charge little or no fee to retain the original document. However, the executor and family members should be made aware of which attorney is in possession of your will, especially if it has been years since you have talked to the attorney. Even if you decide not to ask your attorney to keep the original copy of your will, your attorney may be asked to keep signed copies in case the original is lost or destroyed. A copy of the original will can sometimes be admitted to the probate court if the original is lost. However, this requires additional documentation and testimony.

In House

If you decide to store the original copy of your will in your home, an option would be to store it in a waterproof and fireproof safe (ideally, the safe would be large and heavy or built into the structure of the home to help prevent thieves from taking the actual safe). Some people have also been known to store their will in a filing cabinet or in a plastic bag in the freezer—but this is not recommended for obvious reasons. No matter where you decide to store your will, be sure to tell your executor and beneficiaries

where you've put the will—after all, you want your will found when the time comes.

The County Clerk

Depending on where you live, the county clerk may store the original copy of your will for a nominal fee. Although this may sound like a fail-safe solution for storing your last will, your named executor and beneficiaries may not consider the court when looking for the original will unless they are specifically told. To complicate matters, if you decide to move out of the county and your will remains in the original county, it may make it more difficult to travel to make changes to your will and doubly difficult for your beneficiaries to locate your will.

The most important thing to remember is, no matter where you decide to keep the original copy of your will, tell your executor exactly where the document is stored. And just in case you forget, you might even want to make a note to yourself.