

Ethical Wills

Sending a Personal Message from the Deceased to Those Left Behind

By ANN I. WEBER, Esq.

Do you remember old movies where, after the death of an important person, there is a formal reading of the will? The family, trusted retainers, and ancient lawyer gather while the lawyer reads the will, which imparts not just a distribution of assets, but also advice and wisdom — and sometimes also spite and vitriol — from the recently deceased.

Of course, the latter two emotions are certainly not recommended in current estate-planning practice, but, upon the premise that we are all important persons with or without family retainers, ethical wills have been reintroduced as a way to send a personal message from the deceased to those left behind.

The concept of an ethical will is not new. It seems to have originated as an ancient Judeo-Christian tradition, which was carried on by rabbis and laypersons as a means of passing ethical values from one generation to the next. In current practice, ethical wills have been touted by websites, books, and how-to manuals as of means of leaving your loved ones a statement of your values and your hopes for their future.

An ethical will is not legally binding as is the memorandum that a testator can attach to his or her will. A legal memorandum sets forth the disposition of specified articles of personal property, i.e., “my jewelry to my daughter, my tools to my granddaughter, my old Ford Taurus to my son,” etc. When properly drafted and executed by the testator, a memorandum is legally binding and will be judicially enforced.

An ethical will, on the other hand, passes on the testator’s final wishes for the family, which can range from desired funeral

arrangements to heartfelt lessons, insight and advice for the next generation, or even reminders of events which will bring a smile to the faces of those left behind. It is not a binding legal document, but an expression of memories, values, and hopes for the future.

It can provide an opportunity to say what has not been said in life — though all writers on the subject caution against saying any-

the values that allowed her to create a successful business and how she hopes her values and ethics will be carried on by the next generation may include stories of how she came to create the business, her successes, her failures, what she learned from them, and how she hopes these lessons will be carried on in the future.

Another person might create a video so that he can have a last conversation with his loved ones, tell a favorite joke or story, and share a last laugh with his family. Scrapbooks and online collections of important family memories may also be part of the ethical will.

If you would like to include such a document with your will, trust, or other testamentary documents, talk to your lawyer about how to go about this. There are a number of books and online guides to assist you, or your lawyer may

have a format to help you get started. Many families have found comfort in the legacy of an ethical will that allows their loved one to stay with them in spirit after death, so if this is something appeals to you, start the process now and let it evolve as the years go by. Your family will thank you. ■

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thing negative or painful. Ethical wills can often serve as an offset to dry legal documents and may also balance the sometimes sterile and impersonal care that can attend dying in the modern age.

The most effective ethical will leave the survivors with a stronger sense of the departed loved one, what she wants them to understand about her life. An ethical will may also help the family cope with unresolved issues, explain the reasons behind certain dispositions, and help to avoid conflicts that can arise from the bare bones of the testamentary provisions in a will or trust.

Ethical wills need not be confined to a written document. For example, a father may include remembrances of his parents in saved pictures, letters, or a collection of favorite memories and stories handed down in the family. A businesswoman who wants to instill