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Modern Legal Estate Planning: Protecting Your Loved Ones and Your Assets *Why Having Just a Will Is Not Enough*

By David E. Sykes, Esq.

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Introduction:

One of life's many responsibilities is to plan for your legal estate assets to easily pass on to your loved ones when the time inevitably comes. Most people think a validly executed Will is all that is needed to ensure this takes place.

But a Will alone under Iowa law (and most states) is **not enough** to avoid the potentially stressful and time-consuming Iowa Probate Court proceeding. A properly executed Trust that accompanies the Will, however, **avoids probate** and allows your assets to **immediately pass** on to your Beneficiaries without the need for an attorney or the Probate court process.

What Is a Will and What Problems Does It Present Without An Accompanying Trust:

A **Will** is a formal legal document that specifies whom you wish to leave your assets and personal property to when your time comes. The Will names specific **Beneficiaries** who will receive certain assets from your estate. Typically an **Executor** of your choice is named to carry out the terms of the Will, pay any remaining debts from your assets; close your accounts; and, for example, sell your house, business or other belongings. Yet under Iowa state law, before the Executor can perform their duties allowing the Beneficiaries to receive your assets, the estate must go through a mandatory probate court proceeding and obtain formal approval by the probate court judge. This is not commonly understood by many individuals.

In the opinion of the author, overtime individuals will more readily understand that only with a Trust can an individual's estate avoid the mandatory requirements of Probate law.

What If There is No Will or Trust:

If there is no Will or Trust, Iowa law substitutes a mandatory statutory Will allowing your assets to pass onto your Beneficiaries through the probate court process. In lieu of chosen Beneficiaries, the Iowa statute provides a hierarchy of who receives your assets. This process is called “**Intestate Succession**” and it designates Beneficiaries who may not be individuals of your choosing had your Will or Trust been in place.

What Iowa Probate Court Involves:

Iowa Probate proceedings, which take place in court before a probate judge, are typically a time-consuming, public, stressful and often expensive legal process for a grieving family to endure if there is only a Will or no Will at all. Due to its complexity, an attorney is typically needed to process the legal requirements before the probate judge on behalf of the deceased’s estate. This probate process is concluded once the probate judge approves the procedural process culminating in a court order stating the proceedings have been properly conducted and approved.

The length of time for this process to unfold is based on a variety of factors including the complexity of liquidating the estate’s assets. Court documents are filed in court by the estate’s legal counsel to authorize the required steps of the probate process. As part of this process, the attorney may also petition the court to authorize the liquidation of estate assets, such as a car, home, or business, should the Executor deem this the best course of action. Beneficiaries and estate creditors must also be located and properly informed of the probate proceedings through direct contact if known or by publication in a court approved newspaper.

Once the documentation process is completed, the attorney traditionally presents a complete accounting of the estate to the court, including all assets and debts, along with a list of named Beneficiaries. With court approval, the approved creditors are paid, the attorney is paid and then the court authorizes any remaining assets to be dispersed as specified to the Beneficiaries. This process typically can take anywhere from 6 to 12 months or more too complete, depending on the complexity of the estate.

Probate proceedings can be expensive as well. By statute, probate attorneys typically receive approximately 2.2% of the gross value of the estate. As circumstances dictate, the estate attorney may also petition the court for additional “extraordinary legal expenses” that the estate may require. Court costs and publication fees are also paid by the estate.

Why a Trust Should Accompany a Will:

With effective planning, a Will along with a properly executed **Trust**, can completely **bypass** the Iowa Probate Court process and all its legal requirements and expenses. The Trust is initially **Revocable** during the lifetime of the creator, and then becomes **Irrevocable** (cannot be changed) upon the passing of its Grantor (usually called “Settlor”). The Settlor of the Trust during their lifetime also serves as the **Trustee** for the Trust. When he or she passes, the estate is typically then managed by a prearranged **Successor Trustee(s)** who make sure the Trust assets are properly administered and distributed to the **Trust Beneficiaries**.

An attorney is generally not necessary to distribute the Trust estate after one passes when a Will and Trust are already properly in place. In addition, the legal cost of proper legal estate planning including a Trust is typically much less time consuming and expensive than the cost of the probate court proceeding.

Examples of approximate Iowa Estate Probate Costs With or without a Will
(Probate required by law):

Gross estate value:	<u>\$100,000</u>	<u>\$500,000</u>	<u>\$1,000,000</u>
Statutory Legal fees at 2.2%	\$2,000+	\$10,000+	\$ 20,000+
Plus court filing fees	\$350	\$350	\$350
Plus publication fees	\$50	\$50	\$50
Plus extra legal fees	+	+	+

*(Approximate costs)

Examples of David E. Sykes, P.C. Estimated Legal Fees for Will, Trust, Medical Power of Attorney and Living Will
(Probate avoided):

Gross estate value:	<u>\$50,000 to \$400,000</u>	<u>\$500,000 to \$900,000</u>	<u>\$1,000,000+</u>
Attorney fees quote	\$1000	\$1250	\$1500
	<u>\$1,500,000 to \$1,900,000</u>	<u>\$2,000,000+</u>	<u>\$2,500,000 +</u>
	\$2000	\$2500	To be discussed

Additional Components of Modern Estate Planning:

Two other documents are considered an important part of comprehensive legal estate planning.

Medical Power of Attorney: A Medical Power of Attorney allows you to choose a medical advocate to make decisions on your behalf should you have an illness or injury that prevents you from temporarily speaking for yourself.

While spouses, parents, or adult children are often provided with that authority without a Medical Power of Attorney in place, this authority is not universally recognized, and some hospitals may have procedures that may make this process more difficult in the absence of this document.

A Medical Power of Attorney can also allow you to authorize significant others or designated family members or friends not normally granted that authority to speak for you.

Living Will: Modern medical intervention can provide valuable life-saving support for those with life-threatening illnesses and injuries. But if there is no realistic medical chance of recovery, families may be forced to make difficult and often stressful decisions if they have not had any input from their loved ones on what their wishes would be if presented with this situation.

A Living Will is a document that clearly outlines an individual's wishes if there was no chance for recovery and authorizes one's medical advocate(s) to express those desires, such as the removal of life support, to the medical staff. A Living Will provides clear direction to family members and eliminates some of the burden of those decisions in a time of deep distress and grief.

These four legal documents are recommended as part of modern, comprehensive legal estate planning and can guide and protect you, your family and loved ones, and your estate during difficult times.

In some cases a **Durable Power of Attorney** may also become an additional necessary legal document during the lifetime of the Settlor of the Trust if the Settlor is in ill health or cannot serve as the Trustee of the Trust for any reason.

About Attorney David E. Sykes:

David has been practicing law in Iowa since 2008 and is a member of the Iowa Bar Association and admitted to practice in the Iowa District Courts, Iowa Federal Courts, Iowa Federal Bankruptcy Courts and the Iowa Supreme Court. He is a former Maryland attorney and past member of the American and Maryland State Bar Associations.

David is the founder, chairperson and legal counsel for the Noah's Ark Animal shelter a 501 C (3) tax exempt charitable foundation; a founding past director, past president and legal counsel for Jefferson County Farmers & Neighbors, Inc. (JFAN) a 501 C (3) tax exempt educational organization, and more recently the legal counsel for the Fairfield Pickleball Club, Inc. a non-profit Iowa organization.