

Estate planning can avoid distress

High-profile cases show need for wills

By RUSS WILES
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Anna Nicole Smith might wind up doing for general estate planning what Terri Schiavo did for living wills: raising awareness.

Nobody relishes the idea of making arrangements for handling things at death. No wonder more than half of Americans lack even a simple will, according to some estimates, and it's anyone's guess how many of those documents are up to date.

Schiavo made headlines two years ago when her feeding tube was removed and she died without having made any written instructions for the possibility. Had she drafted a living will, a document that spells out one's wishes in the event of incapacitation, it could have avoided much anguish, cost, legal wrangling and publicity.

Smith's estate-planning

problems are of a different nature but expose a similar lack of foresight that's hardly uncommon, especially among younger adults.

Smith had a will, but it was rendered out of date by the death of her son, the person named to receive her assets.

"It just wasn't up to date, and it was poorly constructed," said John Vryhof, an estate-planning attorney with Snell & Wilmer in Phoenix.

For example, he noted the document apparently lacked wording to direct a share of assets to future children — standard clauses that would have proved handy to protect the interests of her daughter, born years after the will was drafted.

Given the complexities of Smith's situation, including her own claim on the estate of her deceased multimillionaire husband, a trust likely would have been a better bet.



"Entertainment Tonight" photo via AP

Anna Nicole Smith — with daughter Dannielyn Hope and Howard K. Stern — was interviewed Oct. 28. Smith died with an outdated will.

Trusts can delay the distribution of assets or income to beneficiaries until a time the trust's creator chooses, and assets can be parceled out gradually rather than at once. With minor children or young-adult

beneficiaries, such instructions provide safeguards against squandering the money.

Trusts also work well for people like Smith, who move around among different states.

"A trust would designate the



MATT MAY/Getty Images-AFP

Terri Schiavo had no living will when she suffered brain damage.

governing law," Vryhof said.

However, he notes many foreign nations don't respect trusts drawn up in the United States, which might have complicated things, since Smith was seeking residency in the Bahamas.

Trusts also can be an efficient way to minimize estate taxes, a potentially critical feature in her case.

Under current law, each person can exclude up to \$2 million this year from federal estate taxes, with the figure rising to \$3.5 million in 2009. In 2010,

the estate tax is slated to disappear, only to come back the next year with a mere \$1 million exemption per person.

Trusts can be worded to maximize estate-tax exclusions. And trusts are better than wills at avoiding probate.

"Trusts can never be worse than just having a will," said John Joseph Volin, an estate-planning attorney in Tempe, Ariz.

Then again, trusts are most effective only when people title their assets properly. Smith might have overlooked this, considering how she neglected to update her will.

In light of her unexpected death, Smith didn't need a living will, a financial power of attorney or a health power of attorney. But those documents could prove vitally important for millions of Americans who might become incompetent because of Alzheimer's disease or other medical issues, typically in old age.