The least you should do about estate planning

If you care about how your property will be distributed at your death, you may want to create a will or living trust. A will or trust is not needed for some assets. Life insurance proceeds and retirement plans, and even some securities accounts, are distributed to a beneficiary or beneficiaries you designate. Property owned jointly by a married couple, simply because it is held that way, is often inherited by whichever spouse survives.

But a will or trust is needed for assets you own in your own name that cannot be transferred by beneficiary designation, such as a farm you own alone. If you do not have a will or trust to distribute those types of assets, then the State distributes them to your heirs according to a detailed state statute. Nothing's wrong with that unless you want your assets distributed a different way.

A will or living trust also designates who takes care of your assets in your absence. You need a *personal representative* or *trustee* to properly dispose of assets in your estate when you die. If you want younger people to inherit your wealth, but don't want them to enjoy it all at once, you nominate the same or a different trustee to administer that wealth, in trust, until they are mature enough to responsibly handle it. If your children are minors, you can also express your wishes about who should be their *guardians* if you die prematurely.

So which do you choose – a will or a living trust? The idea with a living trust is to avoid probate, which is a court-supervised process to distribute your property. The trust requires no court involvement. Keep in mind that a living trust does not save any taxes, so taxes should not factor into your decision. In Washington, you are less likely to need a living trust for many situations because that State has a streamlined and efficient probate process. But in Oregon, which has a more traditional system, you might be better off with a living trust if you value privacy and have assets that can be easily assigned to and from a trust. The older you are, the more sense a living trust makes because death is closer and, from a transfer standpoint, a trust often makes things easier on the survivors; the younger you are, the less likely you're thinking about those types of things, and a will should do just fine. There are also legal fees to consider. Creating a living trust, and then funding it with property, generally costs more than a will.

If you get a will or living trust drafted, you should also get an Advance (Health Care) Directive and a durable power of attorney. On the Directive, you express your feelings about life support measures and appoint someone to make health care decisions for you if you cannot. The durable power generally appoints someone to act on your behalf for personal, business, and investment matters if you become incapacitated.

Rich Miller practices law in Bend, Oregon, in the areas of business, estate planning and taxation. This is the first of a six-part series: (Next: *Title to Property and Beneficiary Designations*) 541-585-1035