



Melanie Witt

## Protecting Your Personal Health and Finances in 2020 and Beyond

IT IS NEVER TOO LATE TO PROTECT YOURSELF AND YOUR FAMILY WITH A PROPER ESTATE PLAN IN PLACE. QUINTESSENTIAL BARRINGTON SPOKE WITH MELANIE WITT OF WITT LAW, P.C. TO OFFER INSIGHTS ON SOME OF THE MISCONCEPTIONS PEOPLE MAY HAVE REGARDING THEIR ASSETS AND WHAT DOCUMENTS MOST PEOPLE NEED TO PROTECT THEMSELVES AND THEIR FAMILY. OUR INTERVIEW DOES NOT CONSTITUTE LEGAL ADVICE. HIRE AN ATTORNEY IF AND WHEN YOU ARE READY TO UPDATE YOUR PERSONAL OR BUSINESS LEGAL NEEDS.

### *Why do you think some people assume they don't need a will?*

There are many reasons people think they don't need a will, or any estate planning documents. One reason is that they think they don't have enough assets to bother making a will. However, if you don't have any estate plan in place and no beneficiary designations, then the state's intestacy statute will dictate how your assets will be distributed after your death. For example, in Illinois if you have a spouse and one or more children, then your spouse will receive half of your assets and your children will receive the other half. Many people wrongly assume that if they are married their spouse would get everything when they die. To make matters worse, if you die without a will when your children are minors, then their share of your estate would be locked up in a guardianship account until they turn 18.

Estate planning by "beneficiary designation" only is another common mistake. Just because you have listed a loved one as your designated beneficiary on various accounts, doesn't mean you don't need a will. The problem is that not all assets can have a beneficiary designation. Also, people tend to forget over time how they have set up their account beneficiary designations (also known as "payable on death" or "transfer on death" accounts). Years later, some accounts are moved and closed, and beneficiaries are inadvertently omitted. Also, using beneficiary designations in lieu of a proper estate plan does not protect you if you become incapacitated

### *How does a trust differ from a will? Should people have both?*

Everyone needs a will, and most people need a living trust. These two documents are intended to complement each other. The main difference between a will and a trust is that a will goes into effect only after you die, while a trust takes effect as soon as you create it. A will is a document that directs who will receive your property at your death. By contrast, a trust can be used to begin distributing property before death, at death, or afterwards. This is especially important if you become incapacitated. During their lifetime and while they are competent, most people act as Trustee of their own trust. However, if for any reason they can't manage their finances, then the successor

Trustee they have named in the trust will step in without having to go to court or hiring lawyers like me! The Will is important because it is a back up to the trust in that it directs that any assets you didn't transfer to your trust during your lifetime be transferred to your trust on your death. If you have children under age 18, the Will is where you name whom you want to act as guardian of your minor children. In the unlikely event that both you and your spouse die while your children are young—and you haven't left a will naming who you wish to be their guardian—then the courts will select one. This is typically the closest living relative and may not be the person you want raising your children.

#### **Why is a trust important no matter what amount of resources you have?**

A good basic estate plan consists of a Will, Living Trust, Power of Attorney for Property, and Power of Attorney for Health Care. So many people think an estate plan only kicks in on a person's death. However, of these four documents, only the Will controls your assets exclusively at your death. Regardless of your assets, it's really important to have something in place naming someone to make financial and health care decisions if you can't make them yourself.

A well-drafted living trust provides for your family, including a surviving spouse and children. Depending on the beneficiaries and your assets, this may likely include creating additional trusts. The benefit of keeping your children's assets in trust can protect a child's inheritance from their creditors and ex-spouses.


Family dynamics can be strained especially amongst siblings following a parent(s) death. Are there ways that parents can avoid adding to this in their estate planning?

Yes. Sadly, estate litigation frequently involves disputes between adult siblings. Some conflicts are unavoidable. However, many conflicts can be avoided through thoughtful estate planning. For example, naming one adult child as Trustee of another sibling's trust may seem like a good idea but it can damage the siblings relationship. To the extent a parent feels comfortable discussing their estate plan and the rationale behind it with their adult children, this can help manage expectations and limit discord later.

#### **What is the most rewarding part of your job as an attorney?**

I love working with people. I enjoy meeting people and figuring out the best way to structure their documents and assets. I enjoy drafting documents that are tailored to meet a client's specific situation and requirements. Sometimes, I'm brought in after someone has passed and I get to work with the family to figure out how to administer the estate. It is rewarding to help families through what can be a wrenching time.

#### **What do you like about working in Barrington?**

I live in Inverness and commuted to Chicago for much of my legal career. When I decided to open my own firm, I wanted to have a Chicago office and a suburban office. Since I already had many clients in Barrington, this was the logical place. Having an office on Main Street in Barrington and an office across the street from the Daley Center in Chicago is so different. I find Barrington especially friendly. Clients frequently just stop by to chat. In fact, I greatly prefer going to my Barrington office over my Chicago office, with its small-town, neighborly atmosphere. It's such a privilege to work in Barrington, with its small-town, neighborly atmosphere. That friendly vibe suits my personality to a T! 



### About Melanie Witt

**PRIOR TO ESTABLISHING HER OWN FIRM**, Melanie Witt was a partner in a large Chicago law firm. Prior to that, she was a Vice President at BMO Harris Bank in the Estate Settlement Department, then Trust Counsel.

Witt represents individuals in estate planning, philanthropic planning, and trusts and estates. She has extensive experience advising entrepreneurs on business succession planning and estate structuring. She also advises clients on premarital agreements as well as estate and tax issues raised by divorce or separation.

Witt earned her B.A., with high honors, from the University of Michigan, and her J.D. from the University of Notre Dame Law School. She was also awarded a Masters of Law in Taxation from the DePaul University College of Law. She was named one of the 10 Best Estate Planning Attorneys in Illinois by the American Institute of Legal Counsel and by Attorney and Practice Magazine and has offices in downtown Chicago and Barrington.

A frequent speaker on various issues related to estate planning, business succession, legal ethics, and charitable giving, Witt is licensed to practice law in Illinois, Wisconsin, and New York.

*Witt Law has offices in Chicago (call 312-613-6305) and Barrington (call 847-387-3946). Learn more at [wittlaw.net](http://wittlaw.net).*