

The Final Communication

By Blake W. Kirkpatrick

If you knew that you only had one day to live and were able to make a final statement to all of your loved ones and those you knew during your lifetime, what would you say? In many respects, your estate plan serves as a final statement to your loved ones and heirs. It can serve as a written reflection of your life and your ultimate legacy. However, most people do not treat it as such. Today, traditional estate planning has been replaced with fill-in-the-blank "simple Wills" and sometimes a lack of planning altogether. Nonetheless, even a lack of planning and/or "a simple Will" can serve as a "final statement."

An Example of a Legacy Forgotten

Meet John and Mary Doe. John and Mary are your typical happily married couple with three grown children with four beautiful grandchildren. John and Mary became financially successful by working hard and making sacrifices along the way. While John and Mary, especially later in life, lived comfortably, they understood that living lavishly and extravagantly could lead to potential strife and/or financial hardship in the future. After a while, John and Mary were able to accumulate a modest estate predominantly consisting of a primary Florida residence, a small vacation home in Michigan, a timeshare or two, IRAs and a few other investment accounts.

John and Mary faithfully gave to worthy charitable causes throughout their lifetimes, including tithing 10% of their earnings to their church. Occasionally, when the circumstances were right, John and Mary gave small financial assistance to their children by helping with their grandchildren's education or assisting with a down payment on a house; however, they were careful not to become their children or grandchildren's financial crutch.

Fast forward to John and Mary's death in 2012. John and Mary thought it was important to have a Will but considered their intended desires to be

"simple." On the surface, John and Mary wanted to make sure that their estate would pass in equal shares to their children at their deaths. Therefore, all John and Mary thought they needed were "Simple Wills." However, deep down, John and Mary wanted their children and grandchildren to understand that there is more to life than acquiring the biggest bank account.

Therefore, let's review some of the inconsistencies in John and Mary's "final statement." First, due to use of simple Wills to convey all property at their deaths, John and Mary's respective estate administrations ultimately cost their children more after having to probate multiple assets in separate states (especially those timeshares!). Second, John and Mary took numerous steps to ensure that their children were raised with strong family values and became self-sufficient. However, with respect to the windfall that the children ultimately did receive, the children would no longer be motivated to be self-sufficient. John and Mary also were not aware that one of the children would later get divorced and another would be sued as a result of a failed business. Finally, never again will John and Mary be able to make a charitable contribution to a worthy cause or support their church and missions they may have been passionate about.

Instead of the above, John and Mary's final statement could have been a more accurate reflection of their lives. For example, rather than outright distributions, John and Mary could have provided for assets to remain in protected trusts for their children (and grandchildren) that provided for distributions to their descendants similar to those that they made to them during lifetime (i.e., for help or need and not to become the crutch they were trying to avoid). Ultimately, that legacy (and security) could pass from generation to generation. Further, providing for charitable contributions or endowment through their estates would have allowed John and Mary to leave a lasting legacy. After all, the children and grandchildren could still receive the bulk of John and Mary's estate and even be a part of that process.

Who knows? A well-planned final statement may have been seen by their children and grandchildren as a reflection of the love and generosity that John and Mary extended, not only to them, but also to their community and those in need, as opposed to simply a recitation of a common birthright. Certainly, John and Mary's lives were about more than just money. However, handing over the keys to the checkbook to the next generation and saving a few dollars during the estate planning process would appear to be inconsistent.

The above example is not far from the typical scenario and demonstrates that even in "normal" situations a well-crafted and thought out estate plan is nevertheless important. We encourage you to consider making the most of your final statement by investing both time and effort in your estate plan.

The comments expressed herein are intended for general informational purposes only and should not be relied upon as legal advice. Please consult legal counsel to obtain specific advice for your situation.

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