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To Heir Is Human

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Most of us have relatives for whom we want to provide if anything happens to us. For some of us, it's our spouse and children; for others, it may be an elderly parent. For former Chief Justice Warren Burger, it was apparently Uncle Sam.

According to recent press, because Burger wrote a bad will, he, in essence, named the government as heir to one-fourth his estate.

While I have nothing personal against Uncle Sam, I believe I've contributed quite enough to him during my life to not feel any obligation to pay his way after my death. If you share my feelings on this subject, please read on.

Let's take a brief look at estate planning, beginning with some definitions of the most commonly used documents.

WILL: A will determines the way that your property will be dispersed after your death. Through a will, you may also indicate who will be the guardians for your children. While a will is the most simple estate-planning document to set up, it also entails a very complicated drawback: The necessity of probate court.

LIVING WILL: A living will provides that, in the event of a terminal illness, you will not be kept alive by artificial life support systems. On the surface, this may not seem like a form of estate planning. However, by limiting treatment, you are also limiting your hospital bills, thus ensuring that your estate will not be

drained of all assets.

LIVING TRUST: A living trust allows you to allot property for your heirs during your lifetime so that, upon your death, the property will automatically go to your heirs without a lengthy detour through probate court. You may alter or revoke your living trust at any time during your life.

Another loophole for avoiding probate exists for estates that are worth under \$60,000 in their entirety.

For such estates, your heir can obtain title and make a claim to the property you leave behind by simply signing a declaration. This procedure works well when the person signing the declaration would logically have been the one to inherit the estate. It is important to remember, however, that logic does not always prevail. Therefore, as in most cases, it is best to leave something in writing.

This brings us right back around the loop to a will. For estates under \$60,000, however, our little loophole may let your will slip right by probate. You may opt for a "holographic" will.

Nothing in a holographic will can be typed or in any way mechanically inscribed; only handwriting is acceptable. Your holographic will must specifically state what is to go to whom, and it must be signed and dated. With your holographic will and the above-mentioned declaration in hand, your heir stands a good chance of making a claim and

taking title to your property without the headaches of probate.

While this procedure may work well a good portion of the time, it is important to keep in mind one of the most annoying traits of a loophole... sometimes, with just a bit of tension, it can close right up on you.

What type of tension? Well, there are complications if the estate includes real property. Also, it's possible that more than one person may try to claim the property. Too often, kids who for so long enjoyed holidays together in the family home have been relegated to battle over that very home just because their parents did not plan ahead or, like Burger, did not plan properly.

We know that an ounce of prevention is worth a pound of cure. However, we often take this to heart for our medical needs while letting our legal affairs plummet to terminal status.

The moral of the story is something you've always known: Planning ahead is smart business.

Bob LaCroix is an attorney who has served the Ocean Beach Community since 1979. If you would like to request a topic for an upcoming issue of The o.b.server, or if you have a legal question you need to discuss, feel free to call Bob's office at 223-2527.