

# WHY YOU NEED A ● Will AND A Way

**BY MONET BINDER, ESQ.**  
(REVIEWED BY THE BAIS HAVAAD HALACHA CENTER)

*Elul is a time when we conduct a cheshbon hanefesh — personal accounting — and look to the future with an eye towards improving ourselves and our relationships and deepening our connection with Hashem. As Elul arrives, we can be proactive by preventing confusion, misunderstandings and machlokes, which can tear families apart. We have an opportunity to create shalom by removing future uncertainties and properly planning in advance, for our own health and financial management, and the security and well-being of the loved ones we leave behind.*

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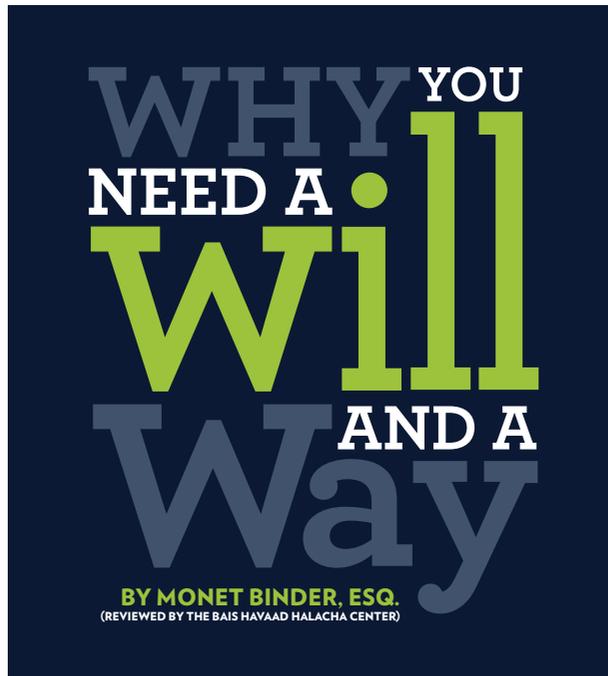
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Since publishing any true story requires presenting the facts as they happened, they are not to be taken as condoning any actions or words that are conveyed, and no halachos should be derived from them without consulting one's posek.

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**CORRECTION:** A reader pointed out that in Dor Yesharim Part II (*Parashas Va'eschanan*/July 29) the sentence that read: "Should both parents *transmit* the defective gene, their child has a 25-percent chance of being born with that disease — one in four children!" should have read: "Should both parents *carry* the defective gene, their child has a 25-percent chance of being born with that disease — one in four children!"

**NOTE:** In "Much More to Give" (*Parashas Eikev*/Aug. 5) the Homes With A Heart (HWAH) program should have been attributed to Bikur Cholim Chesed Organization (formerly Bikur Cholim of Boro Park),-which is also the organization behind the Family Crisis Intervention Program and Chayeinu Program.

# A

lthough most people recognize the importance of proper estate planning, too many put it off or do not make it a priority because making end-of-life decisions is difficult and unpleasant. We all want our families to live harmoniously after we are gone, and we would like our belongings to be distributed according to our wishes. For Orthodox Jews, there are Torah guidelines that govern the way we accomplish this. Unfortunately, throughout the Orthodox community, these laws have been overlooked simply due to lack of awareness and understanding. As a result, too many families suffer because of improper planning, or worse, no planning at all.

Without a will, complying with the Torah laws of *yerushah* (inheritance) is usually not possible. To provide for those who fail to plan at all, the state of New York has its own distribution plan, which differs from the *sefer of yerushah*, the Jewish order of inheritance. In New York, a deceased person's surviving spouse and children all share in the deceased person's estate. According to the *sefer of yerushah*, if a man has sons, they are the sole heirs of his estate. If there is more than one son, each son inherits an equal share, except the *bechor*, the firstborn son, who receives a double portion. If the *niftar* leaves a widow and unmarried daughters, there are Torah guidelines that may provide for their support; however, they do not inherit any property outright.

A non-halachic, secular will can also result in a breach of the natural *sefer of yerushah*. At the moment of death, halachic heirs automatically inherit the estate of the deceased, following the *sefer of yerushah*, even without any documentation whatsoever. Though the person may have written a secular will, after death he no longer has the halachic authority to transfer his possessions to anyone, as they no longer belong to him. Because a secular will becomes operational only after a person passes away, adherence to its terms could violate the *sefer of yerushah*. Also, in certain cases, writing a secular will without halachic validation can even be a Torah violation.

Poor planning can cause tremendous tension and conflict between family members. There may be those who feel they did not get their fair share of the assets and are prepared to battle legally for their cause. Family members who are not on the best terms may feel forced into unworkable partnerships while having to make end-of-life health care decisions, financial decisions, or other difficult decisions in administering the estate. Sadly, in the absence of proper planning, thousands of families are torn apart each year trying to determine what their loved ones may have wanted regarding medical and financial matters that were not addressed and legally stipulated in advance.

By way of example, let's consider Mr. Goldberg, who recently passed away. He left behind a spouse, two sons and a daughter.



Although Akiva was the oldest of the three children, Binyamin, along with his mother, managed the family business, and Miriam was still in high school. Mr. Goldberg had repeatedly told his wife that if she were to survive him, she would inherit everything.

If Mr. Goldberg passed away without a secular will, he would be considered to have died intestate, and the local laws of the state would control his asset distribution. Even though Mr. Goldberg's intentions were often stated, because they were not specified in legal documentation, his wishes could not be honored.

Furthermore, if he did not have a will (and after all the fees of probate and estate administration had been taken from the estate), the New York State distribution plan would give

a designated dollar amount, plus half of the remaining estate, to Mrs. Goldberg. The balance would be distributed to her children. If Mrs. Goldberg were to enforce her rights to receive her portion according to state law, she would acquire assets that were not rightfully hers halachically, and she would be guilty of *gezel*, halachic theft.

If Mr. Goldberg had a secular will that distributed all of his assets to Mrs. Goldberg outright, and Akiva and Binyamin were still alive, they could go to a *beis din*, a Jewish court of law, claiming to be the exclusive halachic heirs of their father's estate. They could claim that title to all of their father's assets was theirs automatically, immediately after his passing, even without any documentation. In addition, Akiva could fight for his right to receive a double portion as the firstborn son. The shattered family's turmoil and pain would be worse if any of the (hypothetical) litigants challenged the *beis din's* decision in secular court.

Even among the most congenial families, one should not rely on the possibility that a will that does not comply with *halachah* will be honored and unchallenged. No one wants their children arguing over money or material possessions after they are gone. It is therefore incumbent upon every Jewish person to have a comprehensive estate plan that conforms to *halachah*. It should be noted that a comprehensive estate plan is more than simply having a signed will. Some of the important documents in a comprehensive estate plan may include:

- **A HEALTH CARE POWER OF ATTORNEY**, in compliance with *halachah*, gives another person the authority to make end-of-life health care decisions on your behalf. The person you designate is required to seek the guidance of a reliable Rabbinic authority of your choosing if there are serious medical issues.

- **A DURABLE POWER OF ATTORNEY** gives a person you choose the ability to legally manage your finances and assets that are not controlled by a trust. Examples include: IRA and 401K assets, memberships, and filing income taxes.

- **A LIVING WILL** provides instructions, determined by you and your Rav, to physicians regarding life-sustaining measures in the event of a terminal condition or persistent vegetative state, *chalilah*.

- **A Health Insurance Portability and Accountability Act (HIPAA)** release allows your medical condition to be disclosed to others, including family members who, under the HIPAA laws, otherwise would not be able to get health information from your treating physicians. Current HIPAA laws prohibit

doctors from discussing the health of a patient with anyone, including family members, unless the patient has signed a release. This document can be important if you have family members that you would like to keep updated on your health or if you need medical records transferred from one health care provider to another.

- **A REVOCABLE LIVING TRUST**, fully funded, gives you complete control while you are alive and well, providing instructions for your care (and that of your family) during a period of mental incapacity or physical disability, and privately distributes your estate to your beneficiaries at the time of your death.

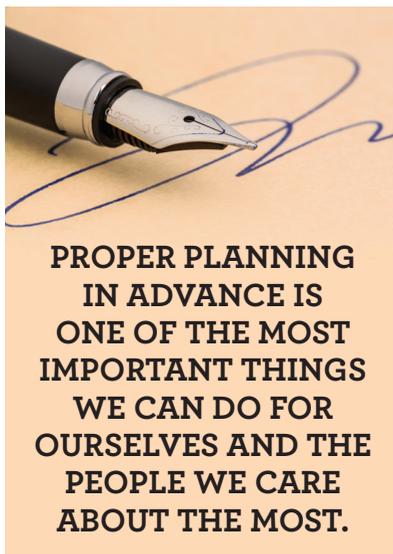
- **A WILL** includes the names of guardians you selected for minor children, and directs any assets that may not have been funded properly to be distributed to your trust.

- **MEMORIAL INSTRUCTIONS and a LEGACY STATEMENT** are important to the success of any estate plan. This is where you can pass on family values to loved ones. Memorial instructions can include where you want to be buried, along with what type of preparations need to be made and observed halachically. A legacy statement is an opportunity for a person to give not only financial assets to a beneficiary, but a lifetime of experience and guidance. This may be a chance to convey your values to your beneficiaries, which can be transmitted through generations.

Since every family is unique, with its own set of circumstances and makeup, it is important to beware of attorneys who use boiler plate halachic wills as a one-size-

fits-all document. Halachic documents need to be personalized and specifically designed to accommodate varying family issues.

Too often, we forget that Hashem's Torah directs every aspect of a person's life. We in the Orthodox community need to recognize the importance of proper estate planning, and that there are halachic guidelines that must be followed. The most beneficial and acceptable way to avoid potential issues regarding end-of-life health care and inheritance is to structure a comprehensive estate plan that complies with *halachah*. Proper planning in advance is one of the most important things we can do for ourselves and the people we care about the most.




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MONET BINDER, ESQ., has a practice in Kew Gardens, New York, dedicated to protecting families, their legacies and values. All halachic documents are approved by the BAIS HAVAAD HALACHA CENTER in Lakewood, under the direction of Rabbi David Grossman and the guidance of Harav Shmuel Kaminetsky, shlita, as well as other leading halachic authorities.

# Don't Wait Until It's Too Late

*“As someone who recently lost a parent, I commend you for publishing “Why You Need a Will and a Way,” by Monet Binder (Parashas Shoftim/August 19). This topic is not easy to discuss with one’s parents, and no one wants to imagine that their close family might be ripped apart by bitter arguments over yerushah. But death is part of life, and unfortunately the “closest” of families are often those hit hardest when a parent is niftar without having left a halachically valid will. Please don’t put off dealing with this potential time bomb until it’s too late. Please use this article to bring up the topic, so that your parents’ legacy is shalom, no matter the size of their financial holdings.”*

-name withheld upon request

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# Act Now to Preserve Family Unity

We hope you found this article both informative and meaningful. Our office is here to answer any questions and to assist you in meeting your Estate Planning needs and objectives. Call and ask to schedule an initial consultation at no charge.

## Call

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