

Justice Burger bungled will

Taxes could total over \$450,000

Associated Press

WASHINGTON – Warren Burger, once the nation’s highest – ranking judge, prepared a “woefully inadequate” will before he died, and it could cost his heirs plenty. The legal tangle is a cautionary tale for those Americans who have avoided proper estate planning.

“This really is a sad example,” said lawyer George Dodge in Arlington, VA. “Burger’s estate of \$1.8 million may face federal and state taxes of over \$450,000. He possibly could have avoided that.”

Burger, who served as the nation’s chief justice longer than anyone this century, retired in 1986. He died in June 1994 at age 87.

Just after his wife died in 1994, Burger used a computer to type a one-page will leaving one-third of his estate to his daughter, Margaret, and two-thirds to his son, Wade.

It appears the ex-chief justice prepared the will hastily, not bothering to check his spelling.

The document named Wade Burger and J. Michael Luttig, a federal appellate judge and a former law clerk and special assistant to Burger, as executors but misspelled the designation once as “exeuctors.”

More importantly, the document did not grant the executors any power to sell Burger’s real estate. “That omission means they need a probate court’s permission to dispose of the property. We’re talking about unnecessary attorney fees and court costs,” Dodge said.

In an article published in the Arlington County BAR Association Journal, Dodge called the will woefully inadequate.

The article noted that the will also failed to waive bond or surety, making it necessary to get a bonding company to insure the executors against any claims of negligence.

The will also does not appear to be “self-proving” under Virginia law, meaning that the two witnesses to Burger’s signature could be required to testify in person that they did, indeed, see him sign it.

“All these will, or could, add unnecessary costs,” Dodge said.

Burger did not protect his heirs from estate taxes. Dodge, assisted by the accounting firm of Murray, Jonson, White & Associates, estimated the federal estate taxes may be as high as \$378,000 and Virginia’s estate-tax bite as much as \$78,000.

“If proper estate planning measures had been taken, it’s possible there would be no estate taxes due,” Dodge said. “Through trusts and gifts, he possibly could have saved it all -- and that’s a huge chunk of money.”

How much would such estate planning have cost Burger? Dodge said a large Virginia law firm probably would have charged Burger \$2,000.

Most Americans might not need such help because the federal estate tax exempts up to



COSTLY WILL:
Former Chief Justice Warren Burger left a one-page will that appears to have been done hastily and could cost his heirs hundreds of thousands of dollars.

AP photos

\$600,000 in assets and many state tax schemes mirror that exemption.

“But virtually everyone needs a will,” Dodge said. “It lets you control and direct where your assets go – to your spouse, children, charities.”

The will and probate record of the former chief justice, a man who zealously guarded his privacy, is open for public scrutiny at the Arlington County Courthouse, in Deed Book 196, page 96.

A lawyer familiar with Virginia probate law could have told Burger how to keep the whole thing out of public record.