

# Wills

## And Other Important Documents

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# Topics of Discussion

- Wills
- Trusts
- Powers of Attorney
- Health Care Directives
- Medicaid
- Tips on Working With an Estate Planning Lawyer

# Why Make a Will?

To answer this question, let's answer another question: "What Happens When You Die Without a Will?"

# What Happens When you Die *Without* a Will

- “Administration”
- Any interested party may bring petition (including creditors!)
- Must serve heirs unless they sign acknowledgements
- Often, must publish notice in newspaper for one month before being “sworn in” as Administrator
- Often, must seek approval from Court to sell property or do other things
- Often, required to file periodic inventories and returns with the court

# What Happens When you Die *Without* a Will

- Must publish another newspaper ad after admitted
- May be required to post a Surety Bond with the court
- Distributions to minors create many problems (a guardian is often necessary)
- Distributions are set by law (to Heirs at law)
  - Heirs are first your spouse and children (with spouse never taking less than one-third) or your descendants
  - If no spouse or descendants, then to your parents
  - If no parents, then your siblings
  - Then to your nieces, nephews, and then to other family members
  - If no blood relatives, then your property *escheats* to the State

# What a Will Can Do?

- First and Foremost – Distribute your property the way you want
- Name an Executor
- Allow your Executor to serve without court intervention (sell property, require no bond, etc.)
- Direct distributions to minors (through trusts or otherwise)
- Name a guardian
- Tax planning
- Planning for Special Needs

# What a Will Can Do?

- Give to Charity
- Control the payment of debts and expenses
- In short, Estate Planning helps you
  - Clarify your preferences
  - Provide for Contingencies
  - Eliminate needless expense
  - Communicate with the next generation
  - Avoid or resolve family conflicts or potential conflicts
- Note that probate is still necessary with a Will

# Can You Draft Your Own Will?

- Absolutely, but you should exercise extreme caution – almost always, you “get what you pay for”
- Homemade Wills are usually counterproductive
- At the very least, an estate planning lawyer can ensure your will is properly executed (which is surprisingly difficult!)
- Language construction is particular with Wills
- Forms on the Internet/Computer Software/Office Depot
  - Often too generic
  - Even if they claim to be state-specific, they often are not

# Avoiding Probate Altogether

- Even if you think your estate will not need to go through probate, you still need a Will
- Jointly Owned Property
- Beneficiary designations on accounts (example: Pay on Death accounts)
- Beneficiary designations on Life Insurance and Retirement Accounts
- Trusts

# Trusts

- Essentially, a trust is a separate “legal entity” which “holds” your property
- The “grantor” of the trust gives a “trustee” property to hold “in trust” – the trustee is *bound* to use and distribute the property *only as instructed* by the grantor in the written trust instrument (the document)
- Thus, when you die, if you have given *all your property* to your trust, you have *no property* which will need to go through probate

# Trusts

- You still need a Will!
- Revocable Trusts do *not* protect your property in any way (creditors may still reach your property)
- May be more private (your wishes are not on record with the court)
- Can be used for other estate planning purposes
- Can be used to provide for individuals with Special Needs
- Property must be properly transferred to be effective

# Powers of Attorney

- A Powerful Tool
- Allow you to name an “agent” to make financial and property decisions on your behalf
  - Transfer or sell your property
  - Access your accounts
  - Pay your bills
- Can become effective immediately or upon the happening of an event (such as your incapacity)
- Can substitute for a conservatorship
- Expires upon your death

# Health Care Directives

- Probably the most important document of all
- Like a POA for Health Care purposes
- Allows you to appoint a “health care agent”
- Also acts as a “living will” so you may make your wishes known in advance, in writing
- Can prevent a guardianship, or if a guardianship is needed, allows you to name your preferred guardian
- Georgia has a new statutory form
  - The form is extensive, but must be read *carefully*

# Medicaid and Governmental Assistance

- Long Term Care for the elderly can easily cost \$60,000 per year – often much more
- Long Term Care Insurance
- Medicare versus Medicaid
- General SSI and Medicaid requirements
  - Aged (65 or older), Blind, or Disabled
  - Countable Income less than the limit during the year you apply
  - Countable Resources less than the limit during the year you apply

# Medicaid

- 2009 Medicaid Resource and Income Limits
  - Income: \$2,022 per month
  - Resources: \$2,000 if single / \$111,560 if married
- Income concerns can often be handled through the use of a “Miller Trust”
- Resource Limits can only use a similar trust (called a Special Needs Trust) in certain circumstances
- *But*, these resource and income limits apply only to *countable* resources

# Medicaid

- What are not countable resources?
  - Principle Residence
  - One Vehicle
  - Personal Effects
  - IRAs
  - Burial Plots, Burial Funds, Burial Spaces, Funeral Contracts, etc.
  - Life Insurance
- Gifting – Transfer Penalties
- Estate Recovery
- Medicaid Rules are extremely tedious – be sure to consult with an attorney before resolving these issues

# Working with an Estate Planning Lawyer

- Do not be afraid to ask questions!
- Come prepared
  - Lawyers generally charge by the hour – even if they quote a flat fee, it will be based on the amount of time they estimate it will take to complete your estate plan
  - Bring documents – deeds, insurance information, financial statements, account ownership information, beneficiary information
  - Know how your property (including real estate) is titled (how it is owned)
  - Think about the goals you want your estate planning to accomplish – but be open and flexible to suggestions

# Working with an Estate Planning Lawyer

- Be prepared to discuss uncomfortable topics (such as health issues, financial issues, etc.)
- Be sure to tell your attorney if someone in your family has special needs – even if your attorney does not ask!
- Consider cost
- Quotes are difficult to give over the telephone – most quotes are for a “simple will” which is difficult to define and often not what is needed
- Schedule an appointment to meet with your lawyer so that your estate plan can be assessed

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