

Where There's a Will... Part 2

By Mary Lynn Kirby

Last month we began our two-part series on why you should do a will. To recap, with a will YOU, not the government, can decide who gets your assets and when the beneficiaries will receive those assets. This week we will focus on an additional reasons to do your will: You can control who will be in charge of both your estate administration, which may include the distribution of your children's funds over the course of time, from your estate, and who will be in charge of actually housing your children.

There are several roles that must be filled in the preparation of your wills. The first role that must be filled is the executrix executor. This person is in charge of making sure the deceased person's debts are paid and that the assets of the deceased person are distributed pursuant to the terms of the will, or, if there is no will, according to the laws of intestacy. (We talked a bit about the laws of intestacy in last month's article.) This person needs to be able to get things done; in other words, the worst characteristic of an executor is procrastination. If the executor is not proactive and willing to get things done in a timely fashion, the estate, and therefore the beneficiaries, can really suffer. In many cases, the executor will hire a lawyer to help with the legal part of the estate administration. Every will needs this player and I think it is usually a good idea to have a backup executor in the event the first named executor is unable to serve.

The next player is the trustee.

The name should indicate the characteristic which is most important in a "trust"ee. I have said many times that even a very well-drafted trust is only as good as the trustee. This person is required to both invest the money designated to the trust and make the distributions. In most cases, if the trustee is a non-corporate trustee, I recommend that the trustee hire a professional to help her with the investment part of the trust. The "how much to give and when" part of the trustee's role is the other critical part of this position. Many of the trustee's decisions involve a certain amount of subjectivity. If the trustee is hardnosed or has issues with the beneficiaries, the trust can become counterproductive. I am involved in a trust at this time in which the lawyers representing the trustee are actually making more than my client who is supposed to be the beneficiary of the trust. This should not be happening. Name a trustee who thinks like you think, when it comes to investments and who thinks similarly to you, about how you would want your money spent for your children.

The last, but sometimes, most difficult role to fill is that of the guardian of your minor children. The only way you can appoint a guardian of your minor children in Georgia is through a will. This is the person who will actually house your children. Many young couples avoid doing wills entirely because they do not know who they should appoint as guardian of their

children. Do NOT let this decision, or indecision, on guardianship, keep you from doing a will. The likelihood is very remote that both spouses will be deceased when a child is under 18. The likelihood, however, increases substantially that one spouse may die, and the surviving spouse would then, by the laws of intestacy, own property with the minors (see last month's article)...usually not a desirable result.

Ok, now, we have experienced Basic Wills 101. Next month, we are going to get a bit juicier. We are going to talk about second spouses and what can be done to protect...or not protect, as the case may be...spouses and, even more complicated: children, from mine, yours and ours.



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