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Your Will: A Most Important Document

by Allen A. Bailey

We wish to thank Mr. Allen A. Bailey, senior partner in the firm of Bailey, Brackett and Brackett of Charlotte, North Carolina, for consenting to be guest author of portions of this issue. Mr. Bailey is an active Baptist layman having served his church and community with vigor. He is a member of the American and North Carolina Bar Associations. In this issue of "Equipper," Mr. Bailey addresses preliminary considerations in drafting or re-drafting one's will.

The Editor

A Will can be defined as a legal declaration of a person's wishes as to the disposition of his property after his death.

The Importance Of Having A Will

Many people believe that because of the manner in which they hold title to their property that a Will is unnecessary. This simply is not always the case. A Will is your assurance that your property will be disposed of after your death in accordance with your wishes. The following example illustrates the importance of having a Will to assure the desired disposition of your property:

> Mr. and Mrs. X resided in North Carolina and held title to their real property by entireties (a type of joint ownership with the right of survivorship between a husband and wife). Mr. and Mrs. X also purchased a condominium in an adjoining state. They titled their condominium in the same manner as their North Carolina property. Mr. X died prematurely without a Will. Upon Mr. X's death, it was determined that the state in which the condominium was located did not recognize entireties as a type of ownership, and held that Mr. and Mrs. X each owned an undivided one-half interest in their condominium. Further, it was determined that Mr. X's one-half interest went to his estate. Since Mr. X died without a Will, the laws of the state where the condominium was located determined who inherited Mr. X's one-half interest. It was determined that Mr. X's interest in the condominium would be divided between Mr. X's widow and Mr. X's brothers and sisters.
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> As it turned out, Mr. X was not on speaking terms with his brothers and sisters, and his widow was required to purchase back from Mr. X's brothers and sisters their share of the condominium which went to them under the intestate laws of the state where the condominium was located. This cost Mr. X's widow approximately $25,000.

Hence, Mr. X's property was distributed contrary to his intent which could have been avoided if he had had a Will. The point being, if you have property, and if you want to dispose of this property at your death, executing a Will is your best assurance that the property will be disposed of in accordance with your wishes.

What Size Estate Justifies A Will?

A popular misconception is that the size of your estate either justifies or dictates whether you should have a Will. The size of a person's estate is but one factor to be considered. In fact, very few people can accurately predict the size of their estate at the time of their death. The value of your estate may change substantially because of inflation, inheritance, tax laws, law suits, etc. Most people with farily substantial estates believe that a Will is justified because of potential tax savings. People with small estates sometimes feel that a Will is not cost-justified. It should be noted, however, that a properly drawn Will can help reduce the cost of administration and, as a consequence, provide more net dollars to be distributed to your heirs and devisees. Hence, the size of the estate alone should not be considered in determining whether a person should have a Will.

Selecting An Executor

People have many different reasons for selecting their Executor(s). Some people name their spouse to reduce administration expenses since the spouse will be the owner of substantially all their property. Other people name their bank as Executor to relieve their surviving spouse and heirs of the pressures and obligations of being the Executor at a difficult time in their lives, and because they are confident that the bank will continue to be in existence at the time of their death and will function as a disinterested third party, professionally administering their estate. Other people name two or more parties to act as Co-Executors of their estate, particularly where they desire the control and the judgment of more than one person in administering their estate.

Can An Individual Write His Own Will?

Many individuals feel that a Will may be beneficial to them but are hesitant in paying the fees to have their Will prepared. Often inquiry is made whether it is possible for an individual to write his own Will. The answer to this question is a qualified yes. Handwritten Wills are called holographic Wills and the law in many states will recognize these Wills as legal documents. In other states, however, holographic Wills are not recognized unless they comply with all of the formalities of a normal Will. Therefore, before you undertake writing your Will, you should determine if such a Will is valid in the state where you reside. Further, great care must be taken in clearly stating and directing how your property is to be distributed including any alternative distributions.

What Happens If You Don't Write A Will?

People who die without a Will are technically called parties who die intestate. In the event that you die without a Will, probate proceedings are commenced in the same general manner as if you had a Will; and the probate court in the county where you resided selects an "Administrator" to administer your estate. The administrator functions in the same manner as the Executor, that is, the administrator collects your assets, pays your debts, and then disposes of your property. If you die without a Will, your intent as to the disposition of your property after your death is not known and the administrator must generally look to the laws of the state where you resided or where your real estate is located to determine who will inherit your property. Each state has its own laws as to who will succeed to your property if you die without a Will. In many situations, these State laws will be in complete agreement with your wishes. In many other situations, however, as was illustrated earlier in this article, the State laws will leave your property to parties not contemplated by you. Thus, unless you know the laws of your state concerning descent and distribution when you die without a Will, your property may be inherited by unanticipated heirs, and if these parties do not exist or cannot be located, your estate assets may ultimately become the property of the State.

Using A Will To Reduce Death Taxes

As mentioned earlier, a Will in large estates can be utilized to reduce taxes. Generally, Wills of this nature contain trusts, such as marital, residuary, charitable, and orphans trusts, which either result in deductions for tax purposes or help spread out the tax burden, thereby lowering the effective rate at which the estate is taxed. In smaller estates, because of the large exemptions ($175,000 for the federal death taxes and approximately $100,000 for the North Carolina death taxes) death taxes are generally not a a primary consideration. It is important to note, however, that these exemptions can be dissipated and

are not applicable to all situations. Therefore, it is extremely important to provide to your attorney as much information as possible about your financial activities so that he may properly advise in these tax matters.

Effect Of Jointly Owned Property On The Will

As mentioned earlier, many individuals attempt to arrange their affairs in such a manner that Wills and probate proceedings are not necessary. One common practice is to title one's property in his or her name and in the name of another individual as joint tenants with right of survivorship. Most states recognize this type of ownership. The effect of this type of ownership is that the survivor becomes the owner of the property by operation of law and the property is not subject to the terms of their Will or probate proceedings.

It is strongly suggested that this approach is not in the best interest of most individuals. Putting someone else's name on your property limits your freedom and control over your property, and may subject your property to debts and claims of the other party's creditors. Further, putting someone else's name on your property may result in unexpected estate, gift, and income tax consequences. It is suggested that most people should remain independent and should retain their property in their individual names or their spouses name until their demise. They should also provide for the distribution of their property after their death by the use of a Will or by a revocable trust.

In conclusion, your Will is an important legal document, and you should take the time to have a Will properly prepared and to keep it current. The time and effort you put into having your Will prepared and putting your affairs in order is generally returned many times over to your survivors. ■

For more information on preparing your Will, we invite you to request your complimentary copy of our booklet, "Making Your Will." This booklet is designed to give information on:

- *Should you make a Will?*
- *Do you need an attorney?*
- *Methods of disposing of your estate.*
- *Selecting an estate manager.*
- *After you make a Will.*
- *Property passing outside your Will.*
- *Basic Tax law.*

To receive your copy of this booklet, please return the enclosed reply card.

Giving Through Your Will

Continuing Lifetime Gifts

Many friends of Southeastern Baptist Theological Seminary are in the habit of making annual gifts to the seminary during their lifetime. Often these gifts are designated for special projects such as student aid, faculty endowment, books for the library, the building fund, or one of a host of other projects. As is often the case, Southeastern relies on annual gifts to underwrite special programs; in fact, the seminary would have a hard time continuing some programs if annual gifts were to cease. These types of gifts many times do cease however at the death of the giver. Even though the individual was making annual gifts to a project very special to him, these gifts cannot continue after his death unless specifically provided for in his Will. This would be the circumstances of an individual who made a lifetime pledge to Southeastern but died before his pledge was paid and made no provision in his Will to take care of his pledge. Directing your attorney to include a provision in your Will to honor unpaid charitable pledges will insure that your lifetime charitable commitments will be honored by your estate.

Types of Charitable Bequests

Friends of Southeastern, after making several annual gifts for a special cause, may

wish to see that their project is permanently underwritten or that its scope is broadened. A Will bequest then becomes a viable way to accomplish this objective. Generally, those who make charitable bequests in their Will do so in one of six ways. The cause or project they are interested in usually determines the method they use. For your own personal circumstances your attorney can offer valuable advice on how to accomplish your charitable objectives via your Will. Often charitable bequests will take one of the following forms:

General bequest. A certain sum of money or a percentage of the estate is given to be used as the Trustees of the institution may designate.

Specific bequest. Usually in the form of a specific asset such as a piece of real estate or other named object owned by the deceased.

Contingency bequest. Money or property originally intended for a beneficiary who dies after the Will was drafted.

Designated bequest. Money or property to be used for a specific purpose such as a student aid fund or building program.

Residuary bequest. Money or property remaining in the estate after all other bequests have been considered.

Named fund. Money or property used to create a perpetual fund in memory of an individual.

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Limitations on Charitable Gifts

Some states have statutes that limit the power of an individual to make charitable gifts by Will. Such laws are commonly referred to as Mortmain statues and have their origins in old English law. Usually these limitations are expressed in one of two ways. First, that a charitable bequest or devise is good only if the deceased's Will was signed within a certain time before death, such as three months or a year. The second type limits the share of an estate that can pass to charity. The original purpose of these laws was to prevent an individual from disinheriting close relatives. There are some states, though most have long ago done away with Mortmain statues, which still retain these laws and it is best that you check with your attorney for local statues.

Share Your Plans With Us

Unexpected bequests are surely welcomed at Southeastern Seminary, but there are advantages to you for sharing your plans with us. It may be that one of our special projects here at the seminary would be of interest to you. There may be options you are not aware of that could have a beneficial impact on your estate from the standpoint of taxes or increasing the value of portions going to other beneficiaries. You may find that investigating a planned gifts program has been well worth the time. Furthermore, your letting us know of your plans would give us a chance to thank you properly.

For a detailed discussion of what you should know before preparing or revising your Will and how planned giving can enhance your personal situation, we invite you to request our complimentary booklet on "Making Your Will." You may receive a copy by returning the enclosed reply card. Further, we encourage you to consult your own attorney on how information contained in this newsletter may fit your own situation. ■