

## **Don't Unintentionally Disinherit Your Loved Ones**

Many changes can occur between the execution of a will and its implementation at your death. Changing circumstances can have unintended consequences. For example, a specific gift of IBM stock to a named individual may fail on your death if you sold the shares before your death. Detailed planning helps ensure that your intent at the time you execute your will is carried out at your death.

### **Consider Effect of Sale of Property**

You may have concerns about how an extended stay in a nursing home would affect the disposition of your property. If certain assets are sold to meet your needs in a nursing home, then gifts to some intended recipients may lapse while gifts to other intended recipients continue.

Generally, the intended recipient receives nothing when property that is specifically gifted to that person in your will is sold during your life. Most courts follow this general rule unless a way can be found around it. In many states, even if property is disposed of while you are incompetent, the rule that the gift would fail still applies. Therefore, decide when making your will whether you intend for a separate gift to be made in the event that the specific property is sold before your death.

### **Plan for Lost or Destroyed Property**

What if property subject to a specific bequest is lost or destroyed? Generally, a specific bequest doesn't include insurance policies on the gifted property unless the will provides to the contrary.

One method of ensuring that the intended recipient still receives a fair share is to provide that the specific bequest includes any insurance proceeds payable due to the loss of the property. For example, if you gifted your home to your child in your will and the home burned down just before your death, then your child would receive only the property in its damaged state, and residuary beneficiaries would receive the proceeds of the insurance on the home. By specifically providing in your will that your child is to receive the insurance proceeds on the home if it is damaged, he or she, and not the residual beneficiaries, will receive them.

### **Be Clear and Specific**

Many problems with specific gifts can be overcome through planning. If your intent is to give whatever residence you may own after death to your daughter, then make that clear. If the property is destroyed and the insurance proceeds are intended to go to your daughter as well, then specify that. In addition, decide whether your daughter should take the property subject to any debt on the property. If your intent is for your daughter to receive something if the house is sold before your death, then provide for that possibility as well.

Be certain property that is specifically gifted through your will actually passes through the will. If you are counting on your \$100,000 life insurance policy to fund \$100,000 of specific bequests to named individuals or charities, those gifts could go unfunded if the beneficiary of your life insurance policy is not your estate. Similarly, if you intend to leave all of your property in equal shares to three children but hold the property in joint tenancy with one child, then the property will pass by law on your death to only that child. He or she may then keep the property, make gifts of the property to the other two children, or disclaim the one-half interest. If the joint

tenancy was merely established for convenience, then your other two children could attempt to have the joint tenancy set aside.

Once the property to be bequeathed has been sufficiently identified, be specific when determining who is to inherit it. For example, determine whether “a child” includes stepchildren, adopted children and adults who are adopted.

### **Consider All the Factors**

These are only a few of the issues that may affect who receives what after your death. Clarify if other factors will affect specific bequests. If you have loaned or gifted funds to an intended beneficiary under the will, then specify whether those debts or gifts should be considered in determining the share of the estate that the intended beneficiary is to receive. Otherwise, most states require a reduction in the amount owed to you by the beneficiary before your death.

The key to proper planning is to consider the unlikely. If you need help in asking the question, “But, what if?” please call us. We would be glad to help you draft a will that doesn’t unintentionally disinherit your loved ones.

### **Does Your Gift Include Debt?**

Another way to protect the recipient of a specific gift is to be clear whether you intend for the recipient to pay any debt on the specific property. Some states provide that the gift is free and clear of any debt and that the debt is paid out of the estate’s residue. In other states, the property may be taken by the recipient subject to those debts.