

WILLS, ADMINISTRATION OF ESTATES/PROBATE

ESTATES

Estates are essentially combinations of many other aspects of law. Powers of attorney, gift tax exclusions, trusts, guardianships, wills, and many other aspects of law can be a part of estate planning. For the best fit, tell an attorney what you want to happen and the attorney should be able to tailor an estate plan for you. Estate planning is advisable to anyone with property, assets, or minor children.

The will is the most basic form of estate planning documents, and the will is often all that is needed to provide for the distribution of assets. Call us to set up an appointment to get the answers to your questions.

LIVING WILLS

Most estate planning attorneys will tell you that a living will is one of the most important of will and estate planning. While a will describes what the intent of the deceased was at the time of death, a living will describes the intent of the incapacitated person who is still living. When the person is no longer able to make decisions about their medical care, a living will can be instrumental in determining what the person would have decided. The most common form of a living will is one that directs the hospital or doctor involved to remove the person from life support in the event that they are in a vegetative state or are being kept alive by machines with no hope of recovery.

Having a living will can save family members both emotional grief and money. Without a living will, in Georgia, if a person enters a vegetative state, his or her body will typically be kept alive as long as is medically possible to do so. A living will is therefore highly recommended. When we prepare a will for you, we will also prepare a Georgia Advanced Directive For Healthcare for you. Call us to get more details about this or other aspects of estate planning.

POWERS OF ATTORNEY

When a person is unable to make decisions or wishes to delegate decisions about healthcare or finances, a power of attorney would be appropriate. A power of attorney grants to another person the rights or abilities that the grantor (the one who signs the decision making power to another) would have in the situation described in the power of attorney. Powers of attorney can be very broad and general or very specific. A power of attorney could be given specifically to sell a certain stock when it reaches a predetermined price, or it could be given to handle all investments for an individual. A power of attorney for healthcare could be given specifically to allow an individual to make key decisions for the grantor during an operation, or it could be

given to allow that individual to approve or disapprove all procedures that the medical providers recommend.

PROBATE

While not required, it is strongly advisable to have an attorney to probate a will or administer an estate, especially if real estate or children are involved.

If a person passes away with a will, the will must be probated in order for it to become valid and for it to control. The last will written will typically prevail(although there may be circumstances where the last will does not control, such as in the event of the accusation of coercion or incapacity of the testator). If all heirs at law sign off on the paperwork, the will can be probated as an uncontested probating of the will. Because it only takes one heir to refuse to sign to create a contested situation, it is highly recommended that the person named as executor in the will speak to the family before beginning the court process.

If a person passes away without a will, Georgia law will determine who will receive what portion of the estate. This will be determined based on a priority set out in the law where a spouse, children, grandchildren and other family members are considered. Rather than probating a will, one puts the estate into the administration of the Court. One or more of the heirs of the estate may petition to become the administrator of the estate, but only one will be chosen to handle the affairs of the estate.

Debts are not inherited, but they must be paid out of the estate before the proceeds are issued to the heirs. For this reason, the Court will often require an executor or administrator to secure a bond prior to taking on duties. We can get you in contact with the appropriate entities to secure this bond.

An exception to the rule that debts must be paid out of the estate is the option of seeking a year's support for a spouse. A spouse can request that one year's worth of support be taken from the estate before any money passes to creditors. This year's support come with some advantages and drawbacks that are best discussed on a case-by-case basis with an attorney.

If you are faced with questions about what to do after the death of a loved one, we will be able to go over the proper procedures with you and discuss your options.

TRUSTS

An attorney can help you through the decision process about how to best set up a trust or what trust is best for your needs. While there are many different forms that a trust can take, the basic form of a trust is where one party gives property or assets to a second party to be held and used for the benefit of a third party.

Sometimes an individual administrator is used to control a trust and other times a bank, attorney, CPA or broker is named administrator. Banks tend to be more rigid, but have a safe method of investment and regular payments are certain; however, friends or family members are more flexible while typically having less skill at money management. Friends and family will also typically perform the service without asking for a fee, but we would recommend the security and regularity of a bank or CPA who will generally invest the money wisely and have smaller fees.

Depending upon your situation, hire your attorney to set up the trust and have a family member, bank, or financial institution, recommended by your attorney, administer the trust.

WILLS

A will is a document which dictates how the properties and assets of a person are to be dispersed after death. The property of the deceased will be distributed according to state laws of intestacy unless a will is provided. Many Georgians make the mistake of writing out how they want their property and assets to be handled and distributed after their death without following the state guidelines which are required for a valid will. (It is important to note that holographic wills are not valid in Georgia). Wills can be simple or complex, depending on the needs of the testator (the one who is declaring their last will and testament), but they must follow the state laws in order to avoid intestate distribution of property and assets.

There is a misconception that wills are only for the elderly. Wills can be important for the young as well. A couple may decide that a certain amount of the property should go to the children so that a future spouse would not be able to take money that would otherwise go to the support or education of the children. The couple may decide to set up an education fund. Also, it is important to note that wills can be used to disperse assets in a manner which would minimize estate taxes. Wills should be updated at every major change in life (marriage, the birth of a new child, divorce, or death of a named beneficiary).

Related items of interest are the living will and powers of attorney that help determine who makes decisions about the healthcare or finances of the individual should he or she become incapacitated.