Sweetheart Wills

Nothing says “I love you” quite like a last will and testament (will). And, if you get right down to it, nothing says it better than “sweetheart wills” between married spouses. In this article we take a look at this traditional estate planning tool, to include its uses and at least one pitfall to avoid.

Provide for Your Spouse

Most married couples want to honor their wedding vows to care for one another whether richer or poorer until death they do part. Consequently, sweetheart wills are so named because they reflect this desire by designating the surviving spouse as the direct inheritor of everything owned separately or jointly. Commonly, both spouses have “mirror-image” provisions in their wills to ensure that virtually everything passes to the surviving spouse.

Make Specific Distributions

On the other hand, spouses may wish to make provision for distributions that are not outright to the surviving spouse, but are intended to pass instead to other loved ones or charities. For example, your spouse may have little interest in the ceramic bullfrog collection your beloved aunt Vivian left to you in her estate. Fortunately, you may specifically designate that cherished collection to your cousin Vinnie who was also a Vivian favorite.

Appoint Guardians for Minor Children

In some states a will is the primary legal tool used to appoint guardians (back-up parents) for orphaned minor children. Even if your state provides for other means to make this critical appointment, this is good information to know if you move to such a state. When selecting a guardian, always select a successor or two. Why? Because the primary guardian you appoint may be unwilling or unable at the time of need. Also, select candidates who share your basic beliefs and values, not to mention adore your minor children. Finally, out of common courtesy get their okay before you appoint them.

INSIDE

Are you married? Have you considered creating an estate plan to provide for your spouse if something untoward happened to you? Perhaps it is time for you and your beloved to make matching “sweetheart wills” to legally reflect your intentions.

Did you know probate is not necessarily a requirement when it comes to passing your estate to your loved ones? In fact, there are multiple alternatives. In this article we survey some of the most common alternative strategies to probate.

to distributions that are not

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Disinherit Your Own Children

One of the biggest risks and unintended consequences of sweetheart wills is found in the context of blended families. If you have remarried after being widowed or divorced and have children from that prior marriage, then watch out! Without careful planning, you will disinherit your own children. How? By leaving everything to your new spouse there will be nothing left for your own children.

Send Your Estate to Probate

Many people mistakenly believe that a valid will avoids probate if they become incapacitated or die. Nothing could be further from the truth. A will cannot appoint anyone to handle your financial matters or make your medical decisions if you are legally incapacitated. Why? Because a will only has legal authority upon your death and the subsequent delivery of your original will to the probate court within the timeframe required by statute. Depending on your state of residence at the time of your death, some commonly cited drawbacks to probate are the time and red tape involved (after all, it requires the involvement of an attorney and a probate judge), the additional expenses and the public nature of the process (anyone can get a copy of your will and the inventory of your assets). If these potential drawbacks are something you would prefer to avoid, then you may wish to consider alternatives to probate.

Summary

Before you make any legal moves regarding your estate, make sure you contact an experienced estate planning attorney to fully educate you on your options.

Ask Yourself …

These Questions Regarding “Sweetheart Wills.”

1. Would you like to designate your spouse as the direct inheritor of everything you own separately or jointly? Yes No Not Sure

2. Have you considered making designations to other loved ones or charities for certain assets you’d like to pass down, such as collections or heirlooms? Yes No Not Sure

3. Have you appointed guardians (back-up parents) for your minor children, as well as a successor or two, who will share your basic beliefs and values when caring for your children in the event they are orphaned? Yes No Not Sure

4. If you have remarried after being widowed or divorced and have children from that prior marriage, have you made proper plans to ensure you will not disinherit your own children? Yes No Not Sure

5. Have you contacted an experienced estate planning attorney to fully educate you on your options and avoid probate? Yes No Not Sure
Alternatives to Probate

Some people have heard of probate problems and yet others may have had a bad experience with probate following the death of a loved one. Regardless, if you want to avoid probate at your death, then you do have multiple options.

Joint Ownership

Many married couples own the lion’s share of their assets, with the exception of life insurance and retirement funds, in joint name with rights of survivorship. When one of the joint owning spouses dies, then the other automatically inherits the share of the deceased spouse by right of survivorship. Probate is avoided. Warning: Unless recommended after consultation with an experienced estate planning attorney, never add a non-spouse as a joint owner to any of your assets. Why? Because doing so will make such assets subject to any change of heart, divorce, lawsuit or bankruptcy of your joint owner.

Beneficiary Designations

All life insurance and retirement funds have special beneficiary designation forms available so you can name the primary and even the contingent beneficiaries of the proceeds upon your death.

Make sure you review these designations from time to time; otherwise they may not reflect circumstances that have occurred since your last update. For example, do you really want your ex-spouse to inherit your 401k?

Transfer on Death

A number of states now permit non-probate transfers via transfer on death designations for everything from checking accounts to real estate and everything in between. Very similar to the beneficiary designations for life insurance and retirement funds, all that is needed to transfer the assets outside of probate is your death certificate. Be sure to consult an experienced estate planning attorney to determine whether any of your assets are eligible for transfer by this method.

Revocable Living Trusts

A revocable living trust (RLT) is a legal agreement involving three parties: the Trustmaker (also known as a Grantor, Trustor or Settlor), the Trustee and the Beneficiary. Initially, upon its creation, the Trustmaker, Trustee and Beneficiary are one in the same person. After the Trustmaker funds the RLT (i.e., retitles assets into the name of the RLT), the Trustee manages and distributes the RLT assets according to the trust instructions. This is a critical step, much like putting fuel into a brand new automobile. If the Trustmaker/Trustee becomes incapacitated, then a successor Trustee seamlessly manages and distributes RLT assets for the benefit of the Trustmaker/Beneficiary. Finally, upon the death of the Trustmaker/Trustee/Beneficiary the RLT becomes irrevocable and the successor Trustee seamlessly manages and distributes RLT assets for the successor Beneficiary without probate.

Summary

The advantage of probate versus the alternatives to probate is a complex subject. This is not a do-it-yourself project. Seek appropriate legal counsel to help determine what is best for your unique circumstances.

A Poem for Family Research: Dear Ancestor

Your tombstone stands among the rest;
Neglected and alone
The name and date are chiseled out
On polished, marbled stone
It reaches out to all who care
It is too late to mourn
You did not know that I exist
You died and I was born.
Yet each of us are cells of you
In flesh, in blood, in bone.
Our blood contracts and beats a pulse
Entirely not our own.
Dear ancestor, the place you filled
One hundred years ago
Spreads out among the ones you left
Who would have loved you so.
I wonder if you lived and loved,
I wonder if you knew
That someday I would find this spot,
And come to visit you.

Author - unknown
Moulton Law Offices PS

Our firm is dedicated to providing you with quality estate planning resources, so you can become familiar with all of the existing options. When you visit or call our office, we want you to feel comfortable discussing such an important issue concerning both you and your family. We want to arm you with the information you need to make an informed decision about your family’s future.

If you have a well-drafted estate plan in place, you’ll ensure that your estate passes to whom you want, when you want, and is carried out in the manner you’ve chosen. You can rest assured that your family won’t have to endure the public process and costly matter of probate. The government won’t be able to take what you’ve spent a lifetime building. But you need to be aware of the many options that exist in estate planning—and you must choose your attorney wisely.

That is why Moulton Law Offices offers this wealth of free information and free seminars. Read our Estate Planning articles, and if you’re in the area, join us at an Estate Planning seminar. We want you to feel confident about the choices you make—let us be your guide on the path toward preserving your family’s future.