# Do I Need A Will?

Some clients inquire as to whether one even needs to have a will, since state law prescribes who will receive your estate at the time of death. Actually, the question answers itself, since most people do not wish to leave the disposition of their estate to the provisions of the intestate estate distribution rules. The statutory distribution scheme (known as "intestate succession") will often differ from one's wishes. Moreover, if the decedent owned real property in other states, the rules in each state are very likely to be different concerning the persons who may be entitled to an interest in those properties.

In Virginia, the laws of intestate succession provide that a decedent's estate shall pass to the surviving spouse, unless there are living children or descendants of the decedent who are not also children of the surviving spouse, in which case the estate is divided one-third to the spouse and two-thirds among the children. In the event that there are neither spouse nor children of a decedent living, the estate will be directed to grandchildren (likely still minors), or to other family members who are not intended beneficiaries of the estate. Whenever the decedent's children or grandchildren are minors, the court will require a fiduciary (e.g., a guardian or trustee) to be appointed to receive and manage the property until they attain the age of eighteen years, at which time the inheritance is distributed to them outright. This procedure is also required where life insurance is made payable to minor children as beneficiaries, resulting in the cumbersome and expensive fiduciary appointment process, followed by court supervision throughout the time the children are minors. Clearly, the opportunity to plan one's estate and protect these heirs and their inheritance through wills and testamentary trusts is one that should be taken seriously.

Perhaps most importantly, a person may only designate a guardian for minor children in his or her last will and testament, in the event the other parent does not survive to serve as the natural guardian. Most people assume they have better insight than the courts into which relatives or friends will be able to provide the best care for one's children, both emotionally and financially. The will formalizes this nomination of a guardian (as well as an alternate guardian), and provides the mechanism for a trust to be established post-mortem for the financial support of the children so that the guardian need not be burdened with these inevitable expenses.

The key to a successful probate administration for the survivors is to name the most appropriate persons to manage and distribute one's estate. The testator must avoid setting up a conflict situation when naming an executor to handle the estate (or, more accurately,

# Do I Need A Will? (cont)

the beneficiaries), as well a trustee to administer testamentary trusts. One can also direct the manner in which taxes and debts should be paid, as well as the source of those funds. Clearly, there are many reasons to establish a new Last Will and Testament, and it should be done soon.

Notice – This information is not legal advice or counsel absent an extant attorney-client relationship with the recipient; this information does not create an attorney-client relationship. Seek legal counsel before taking any action on the matters referenced above.

249 Central Park Avenue, Suite 220 Virginia Beach, VA 23462 | Phone: 757.605.5000 | Fax: 757.605.5020