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I. **INTESTACY**

Five Reasons for Having a Written Will

A. ***WHERE DOES YOUR PROPERTY GO WITHOUT A WILL?***

1. **Section 64.1-1 of the Code of Virginia.**

- a. **First, to Spouse.** However, if the deceased is survived by children who are not children of the surviving Spouse, then spouse will take 1/3 and the children (or the deceased children's descendants) will take 2/3 of the estate jointly; **or if no spouse,**
- b. **Second, to Children** and their descendants; **or if none,**
- c. **Third, to Father and Mother** or the survivor; **or if none,**
- d. **Fourth, Brothers and Sisters** or their descendants; **or if none,**
- e. **Fifth, 1\2** of the estate shall pass to the deceased's **paternal kindred** and **1/2** of the estate shall pass to the deceased's **maternal kindred** as follows, to the deceased's:
- f. **Grandfather and Grandmother,** or the survivor; **or if none** then to the deceased's
- g. **Aunts and Uncles;** **or if none** then to the deceased's
- h. **Great Grandfather(s) and Great Grandmother(s);** **or if none** then to the

1. **Brothers and Sisters of the Grandfather(s) and Grandmother(s) and their descendants; and**

And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

B. PROBLEMS WITH MINOR BENEFICIARIES.

1. If minors inherit property, guardianship through the Court will be necessary.
2. Costly and very burdensome

C. WHO WILL RAISE YOUR CHILDREN?

A guardian, chosen by the Court or by you?

D. WHO WILL SETTLE YOUR ESTATE?

Executor or Administrator ?

E. HOW LONG AND HOW MUCH WILL IT TAKE TO SETTLE YOUR ESTATE?

Depends

II. WILLS

A. ADVANTAGES

1. Avoids intestacy
2. Allows testator control over distribution of assets
3. Selection of Guardian
4. Selection of Executor
5. Waiver of Surety
6. Continuation of a business

B. DISADVANTAGES

1. Costs of Administration 5% of Estate
2. Time Involved in Probating A Will is from 6 Months, minimum, to Years
3. May be Contested
4. Public Record
5. Delays in Transfer of Property

C. *COMMONLY ASKED QUESTIONS.*

1. If a couple owns everything with right of survivorship do we still need a will?
2. Who should be the executor, trustee or guardian of the person?
3. May non residents serve as executor, trustee or guardian of the person?
4. Should I nominate alternatives for executor, trustee or guardian of the person?
5. What is meant by waiver of surety?
6. What is meant by waiver of accounting?
7. How do adopted persons and illegitimate persons take under a will?
8. What is meant by a self proving will?
9. Can I change my will in the future?
10. How long does my will last?
11. Does the law prevent me from writing my own will?
12. How much does a will costs?
13. Where should I keep my will?
14. What is a living trust?
15. Is a revocable trust better than a will?
16. What is a living will?
17. What about funeral instructions?
18. How much do I have to worry about taxes? \$3,000,000 exemption
19. Should my life insurance be made out in any special way?
20. Do I need a power of attorney?

III. *SIMPLE WILL PLUS A TESTAMENTARY TRUST*

- A. Trust that can be effective at death
- B. Can select a trustee to manage assets
- C. Especially helpful if both spouses die simultaneously and leave minor children
- D. Assists with problems in regard to minor beneficiaries.
 1. Separate for each child; or
 2. A family trust, i.e., jointly until youngest reaches specific age and at that time division into separate trusts.

IV. TRUSTS IN GENERAL

A. WHAT IS A TRUST?

A vehicle under which property is held by one for the benefit of others; with management and beneficial interests being separate.

B. COMPONENTS OF A TRUST

1. Grantor/Trustor/Settlor

Transfers property and provides specific direction on how Trust is to operate

2. Trustee

- a. Manages assets of Trust
- b. **Holds legal title and is considered the owner of the property**
- c. Is in a fiduciary relationship to Beneficiary

3. Beneficiary

- a. Person for whose benefit the property is held
- b. Holds the equitable title to the Property

C. THREE TYPES

1. Testamentary

2. Inter Vivos Revocable

3. Inter Vivos Irrevocable

V. REVOCABLE LIVING TRUSTS (INTER VIVOS)

A. Grantor retains right to dissolve or change the trust's operation or continuance

B. Advantages

1. Avoids probate saves Executor and attorney fees, costs of administration
2. Effective Now
3. **Trustee can step in and manage when needed**

4. Easily modified or revoked
5. Not many are contested
6. Gives Grantor complete control
7. Immediate distribution after death
8. Not of Public Record
9. **Any property held out of state** does not have to go through out-of-state probate

C. Disadvantages

1. More effort and cost to get assets transferred
2. Cost more than a Will
3. Not of public record, no court filing required

VI. IRREVOCABLE TRUSTS

A. Transfer Assets and They Are Gone

1. Control, Power Gone
2. Can Not Revoke

B. Almost Always Used to Avoid Inheritance Taxes, Shelter Assets, Reduce Personal Wealth and Gross Estate