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## Where There's a Will, There's an Heir

*By Gina M. Barry, Esq.*

We've all heard the expression, "where there's a will, there's a way," but among estate planning specialists, we have changed the old adage some, that is, to "where there's a Will, there's an heir." This saying reflects the inherent complexities involved in establishing a Will and highlights the importance of having a well crafted plan to ensure that your heirs receive your assets as intended.

A Will is document in which you direct to whom your property will pass when you die. In Massachusetts, to execute a valid Will, you must be at least eighteen (18) years old and of sound mind. Your Will must be in writing, signed by you, and witnessed by at least two people who must also sign the Will. Once you have established a Will, you can change it at any time so long as you are competent.

A Will directs the disposition of your probate estate, which consists of any property held in your name alone that does not have a beneficiary designated at the time you pass away. Many people attempt to avoid probate by holding all of their assets jointly with the person(s) that they want to have them if they pass away or by naming those persons as beneficiaries. When doing so, a common misconception is that you then do not need a Will; however, if the joint owner or named beneficiary

passes away first, that asset may pass to your estate to be distributed in accordance with your Will.

Whether you avoid probate depends on whether you leave behind probate assets. If you leave behind probate assets, the only way for you to have a voice in the process is by having a valid Will. Upon your passing, if you leave probate assets and a Will, the Will will be probated and your instructions will be followed. If you do not have a Will, your estate will be administered in accordance with rules established by the state legislature.

When you die without a Will, the distribution of your property is determined by identifying which blood relatives have survived you, if any. The legislature has enacted statutes identifying your "heirs at law," who are the relatives who will take your estate, and also establishing how much of your estate a given relative will take. If you leave no relatives, your property will pass to the Commonwealth. Having a Will removes the possibility and allows you to leave your estate to friends or a favorite charity instead.

A Will is also necessary so that you can name people to fill important roles. You will designate an Executor, who will be responsible for gathering your probate assets, paying your debts, and making distributions of

the remaining assets to your heirs as set forth in the Will. If you have minor children, you will designate a guardian to look after them should you pass away. By not making a Will, you forfeit your power and ability to make these designations and to direct the disposition of your property.

Due to the inherit pitfalls involved in establishing a Will, it is best to have an estate planning specialist assist you. By doing so, you will ensure that your estate will be carried out as you wish by those you have named to do so. When a decedent passes away having a Will that is properly drafted and executed, the adage changes again to "where there's a well-drafted Will, there's a happy heir."

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