

# A Will And A Way

## *The Will Is Often Under-valued When It Comes To Its Estate-planning Significance*

BY TODD A. MCGEE, ESQ.

One of the most important estate planning documents you should have in your possession is a Last Will and Testament. In today's world of joint ownership, trust documents, and deeds with life estate interest, the will is often under-valued as to its true estate planning significance.

A will, by definition, is an instrument executed with the formalities of state statutes, by which you make a disposition of your real and personal property, to take effect after death and which by its own nature is ambulatory and revocable during your lifetime. A will allows you the right to dispose of your solely owned property at your death in accordance with your wishes.

If you do not have a will, or have failed to properly execute a valid one, then you will die, 'intestate' (without a will). This is important because with no will, any property that you owned will be distributed in accordance with state laws. Intestate property is distributed (in most cases) by whom you are survived.

In Massachusetts, property of one who dies intestate will be distributed in the following manner:

- If the decedent is survived by a spouse and children of the decedent, then the spouse takes half of the personal property and half of the real property in the decedent's estate, with the other half being distributed to the children
- If the decedent is survived by the spouse and no children, but there are blood relations, the surviving spouse receives \$200,000, half of the remaining personal

property and half of the remaining real property, and the blood relations get the other half. If the amount of the personal property is not sufficient to pay the \$200,000, then such amount can be obtained by the sale or mortgage of the real property:

- If the decedent left no children, and no blood relatives, then the surviving spouse takes all;
- If the decedent is survived by only children, then the property

passes in equal shares to the living children and to issue of a deceased child by the right of representation;

- If decedent is survived by parents, but no children and spouse, then the property will pass to the parents in equal shares or in its entirety to the survivor of them;
- If the decedent has no spouse, children or parents, but is survived by siblings, then the property will pass to the siblings in equal share or to the children of deceased siblings by right of representation;
- If the decedent dies with no spouse, children, parents or siblings, but is survived by other family relations nephews, the property will pass to the nearest blood relations, 'kindred';
- If the decedent leaves none of the above referenced family members or blood related persons, then the property passes to

the Commonwealth of Massachusetts.

Based on the guidelines listed above, it is important to note that the Commonwealth of Massachusetts could end up with the assets from your estate if you do not take the time to prepare a will. That means your favorite church, charity or friend may never receive the certain item you wanted them to have at your death because you did not take

making the will and that you understand what you are giving to the named beneficiaries. Also, there are certain requirements that must be met in order for a court to treat the will as effective. The basic requirements are:

- The will must be in writing (except in certain situations);
- It must be signed by the person who is making it;
- It must be witnessed by at least two people who sign it in the presence of the maker, and state that they witnessed the maker's intention to make the Will. The witnesses also certify that it is their belief that the maker was of sound mind, over the age of eighteen (18), and not under any undue influence when making and signing it.

Due to the legalities involved in making a will and the ability to create ambiguity in its drafting, it is better to have an attorney assist you. Once a will has been made, it remains in effect until you revoke it.

Finally, if you lose your will, contact your attorney right away in order to determine the best course of action to replacing it. Most times an attorney will give you a copy and keep the original in their vault for safe keeping, make sure you check with your attorney in order to ensure that all your needs are properly addressed. ❖

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the time to tell people what your wishes and intentions are through a valid will.

People often think that if they have a will, then they avoid the possible distribution listed above, as well as the entire probate process. They are only half right. Even if you have a will, it does not avoid probate. The probate court is designed to oversee the division of property among those who are entitled to it. Therefore, if you have a will, the Probate Court will divide up your property in accordance with your wishes as set forth in your Will. It will also ensure that any debts, i.e. funeral expenses, taxes, etc., are paid before making the final distribution of your assets.

In order to have a valid will, the laws in all states require that you be at least eighteen (18) years old and of sound mind. This means that you understand what you have in your estate at the time of