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C O U N S E L L O R S A T L A W

## **What happens to your Will when another beneficiary is born?**

December 27, 2010 by [Deirdre Wheatley-Liss](#)



You Will usually says "I leave my estate to my children" or maybe "to my grandchildren" or "to my children, and if a child isn't living, then to their children". You will notice that no names are being used. Guest blogger [Stacey C. Maiden, Esq.](#), Of Counsel to our [Tax, Trust, Estates and Elder Law Practice Area](#), today looks at the question of **what happens when new children or grandchildren are born after the Will is executed.**

A common question from our estate planning clients, who name children, grandchildren or great-grandchildren in their Wills, is **“what happens if another child, grandchild or great-grandchild is born or adopted? Do I need to update my Will?”** New Jersey has a statute which addresses the issue of the after-born or after-adopted child (N.J.S.A. 3B:5-16) and we can draft language to specifically include any after-born or after-adopted children, grandchildren or great-grandchildren in the Will. But what if the Will does not contain this sort of language and the beneficiaries are great-grandchildren?

The New Jersey Appellate Court recently considered these facts in the unpublished case, [In the Matter of the Estate of Francis Marie Ackerson Yetter, Deceased](#), (A-0971-09, decided December 22, 2010). In her Will, Mrs. Yetter left certain shares of stock to two named great-grandchildren, who were her only great-grandchildren at the time. After Mrs. Yetter signed her Will, two more great-grandchildren joined the family. The after-born great-grandchildren argued that the devise should be treated as a class gift, entitling them to share equally with the great-grandchildren identified in the Will.

**The Court considered the circumstances and overall testamentary scheme, and agreed, finding that Mrs. Yetter did not intend to omit her after-born great-grandchildren.** The Court applied the doctrine of probable intent, which allows the Court, as far as possible, to ascribe to the testator “those impulses which are common to human nature,” finding that excluding two of her great-grandchildren from her Will would be against the “common human impulses” of a great-grandmother who otherwise always treated her family fairly and equally.

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