

HOW NOT TO WILL YOUR ESTATE TO YOUR SON OR DAUGHTER-IN-LAW

If you're not careful, all of it could go to your spendthrift son or daughter-in-law, as well as perhaps his or her future spouse. This issue discusses why that is and how to avoid it.

Your estate may “go” to your grandchildren.

It's a sad reality that many people will outlive at least one of their children. To see how common an occurrence this is, reflect for a moment upon your own family – how many of your relatives died having at least one child predeceased? Plainly, it's a possibility you'll want to plan for, and especially so if you have grandchildren.

Should your child predecease you, two things can happen if you only have a simple will or no will at all: 1. your grandchildren will get that child's share of your estate¹, and 2. their surviving parent (who I'll call your “child-in-law” for simplicity's sake) will “manage” your grandchildren's inheritance for them.

Consider how it should be spent for them.

To see why that might be bad, consider first how you would want such potentially large shares of your estate managed. If you're like most people, you'd like your grandchildren to have a comfortable lifestyle growing up, healthcare and education, and then have a pool of money left over for higher education and perhaps making a start in life.

You probably do *not* want all the money going to enrich your child-in-law and his/her new spouse.

Now consider how it will be spent.

How could that come to pass? Once your

grandchildren have inherited their shares, their parent, your child-in-law, faces a choice every time money could be spent for them: should it be spent out of the child-in-law's income or out of the large, idle pool of cash and investments you worked all your life to accumulate?

Even without malice, many sons- or daughters-in-law will spend on behalf of the grandchildren out of the inheritance you left them and not, as would be the ordinary case, out of the child-in-law's income. With this money to spend for the grandchildren, *the child-in-law's income can all go to support the child-in-law's lifestyle*. Even assuming normal, middle-class spending, your grandchildren's inheritance can vanish long before higher education is even in view. Effectively, you've willed your estate to your son- or daughter-in-law, and they can live a lifestyle that's the same as though they never had children at all.

Now consider a trust.

How, then, to leave your grandchildren money in a way that they (and only they) benefit? A relatively simple solution is to leave the inheritance not to your grandchildren outright but to a trustee, who will hold and invest the money, spend it as needed for your grandchildren's needs, and *take into account any other sources of income available to them*.

When your trustee sees that your child-in-law has income to pay for you grandchildren's school books, the trustee can insist that the child-in-law's income be spent first and the inheritance not diminished. Your child-in-law will need to go on spending like a responsible parent, and your trust fund will be safe to pay for expenses like higher education, which may have otherwise been out of reach for your grandchildren.

¹ Unless, of course, your will provides otherwise, as some do. If no will, then your situation is governed by the Georgia Code in § 53-2-1(c)(3), which provides that “the descendants of any deceased child tak[e], per stirpes, the share that child would have taken if in life.”