

## THE ACCIDENTAL DISINHERITANCE

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Disinheriting heirs can be intentional for good reasons and can be accidental. No one wants to accidentally disinherit an heir. The following are some of the common causes of accidental disinheritances.

### **NO WILL:**

Dying without a Will can have surprising results. If you are married with children one-half of your probate estate passes to your spouse and one-half to your descendants; typically not what the couple wanted. For more information, see *What if I Die Without a Will* information sheet.

### **POORLY DRAFTED WILL:**

Each clause in a Will has a purpose and a meaning that will be construed after death. Vague and conflicting provisions are especially problematic. Also, the drafter of a Will who is not fully familiar with the estate planning laws may create a Will that directs your assets to unintended persons. For example, "I give \$20,000 to my college roommate Pat." If Pat predeceases you, the \$20,000 goes to Pat's descendants under the anti-lapse statute.

### **DEFECTIVE WILL:**

A Will that has been improperly executed (signed) is null and void. An original Will that has many provisions crossed out and/or provisions added can cause the entire Will to be null and void unless the Will is re-executed with full testamentary formalities. To change your Will, have a new Will prepared for you or have a Codicil prepared for you that amends your current Will.

### **OUTDATED WILL:**

Wills need to be reviewed regularly (every 3-5 years) to ensure the bequests you have made are still what you want and the fiduciaries (personal representative and trustee) are still the right persons for the job. Changes in the law can have a major impact on how your estate passes at your death. Changes in your relationships, unexpected deaths, illnesses, and disabilities might impact how you want your assets to pass at your death. A regular checkup can head off problems later.

### **ADEMPMENT BY EXTINCTION:**

A specific gift of property under your Will may fail if you no longer own the property when you die. This is known as ademption by extinction. For example, I give my 1965 Triumph automobile to my nephew Paul. Or, I give my residence known as 14346 Jarrettsville Pike to my son Matthew. If the Triumph is disposed of before your

death Paul gets nothing. Likewise, if the residence is sold before your death Matthew gets nothing.

## **ABATEMENT:**

Most Wills are divided into two dispositive sections: The section for specific gifts and the section for everything else, known as the residuary estate. Abatement occurs when there are insufficient assets in your residuary estate to pay for your funeral, taxes, debts and administration expenses. In such a case, those items would be paid from the assets that were supposed to fund the specific gifts. The Triumph and residence would need to be sold to pay for these items. Paul and Matthew may receive some cash instead, depending upon their priority under the abatement statute.

## **POD & TOD BYPASS THE WILL:**

The most finely crafted estate plan under a Will can be thwarted if there are insufficient assets in the probate estate to pass under the Will. Payable On Death (POD) designations on bank accounts and Transfer On Death (TOD) designations on brokerage accounts cause these assets to pass according to the POD & TOD designations and not the Will. This may leave specific bequests unfunded and cause ademption and abatement because the probate estate is cash poor. The same may happen when assets are titled jointly with another because those assets pass by operation of law to the co-owner and not under the Will.

## **THE BENEFICIARY DESIGNATION SURPRISE:**

Life Insurance, retirement assets (IRA, 401(k), 403(b), etc.) and annuities have beneficiary designations to pass those assets after your death. An outdated beneficiary designation or no beneficiary designation can have surprising and potentially disastrous consequences. You might have named your spouse as you primary beneficiary but who are named as the secondary or contingent beneficiaries if your spouse predeceases you? What happens if a named child predeceases you? These questions are answered by the life insurance contract, the IRA custodial agreement, the 401(k) plan and annuity contract. Each of these have their own default provisions in cases when a named beneficiary has predeceased you and can vary widely. For retirement assets, having the default provision be "pay to my estate" accelerates the income taxes and subjects them to claims of creditors of your estate.



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