

LAST WILL AND TESTAMENTS, REVOCABLE LIVING TRUSTS AND INTESTATE SUCCESSION

While most people realize the importance of having a Last Will and Testament (a “Will”), it is not at all uncommon for individuals to pass away without having put a Will in place. Common excuses for not executing a Will include, “Oh, I don’t own much” or “Everything will automatically go to my spouse, anyway.”

Dying without a Will is known as dying intestate. The State of Georgia has set forth laws of intestacy which dictate what happens to the property of an individual who dies without a Will, and it may surprise you what those laws say. Under the Georgia intestacy statute, the estate of an intestate person does *not* pass to his or her spouse but rather is divided between the spouse and children with the surviving spouse possibly receiving as little as one-third of the estate. Being bound by the laws of intestacy can easily be avoided by executing a Will.

A Will is a legally binding statement of who will receive your property at your death. By planning ahead and executing a Will during your lifetime, you are able to maintain control of your estate. Under a Will, you dictate not only who inherits, but how those people inherit. You have the opportunity to incorporate trust planning or tax planning or planning for an individual with special needs. Additionally, you control who serves as executor of your estate, as trustee of any trusts you have established and perhaps most importantly, as guardian of your minor children.

As Georgians, we are fortunate that the process to probate a Will is relatively simple. “Probate” is the name for the process in the probate court through which the ownership of your assets passes to your heirs. It includes the collection of your assets, the payment of your debts and the distribution of your estate. It only covers what you own outright, not joint property, trust property, life insurance proceeds or assets passing by beneficiary designation.

In Georgia, the probate process can be completed in as little as six months and with minimal expense. This is not the case in all states. In certain states where

the probate process is extensive and very costly, the use of Revocable Living Trusts (“RLT”) in lieu of Wills is very common.

Revocable Living Trusts are an effective way of avoiding probate if properly administered. In setting up a RLT a trust document which is similar to a Will is drafted. Once the RLT has been executed, all property belonging to the person who set up the trust (known as the “Settlor”) is then transferred to the RLT. This includes real property, bank accounts, stocks, bonds, etc. Upon the death of the Settlor, the RLT sets forth who inherits the property contained in the trust and no court intervention is required. Even in a state like Georgia where probate does not have to be particularly time-consuming or complicated, many people prefer RLTs to Wills due to an increased level of privacy and the ease and speed with which assets can be distributed following the death of the Settlor.

Whether you choose to use a Last Will and Testament or a Revocable Living Trust to control your property following your death is inconsequential. Either document can effectively carry out your desires. What is important is that you plan. You make the decisions. You maintain control. And in planning, you are also making your passing a bit easier on the loved ones you leave behind.