

# Align Your Will With Other Documents

You know the importance of having a will. If you die "intestate" (in other words, without a will), your state's laws will determine the disposition of your assets. Your actual wishes will be irrelevant, even though they may be well-known to your friends and relatives.

But even if you do have a will, here is a critical point: Your will has no effect on asset distributions that automatically occur upon your death under "operation of law."

The most common applications of the "operation of law" principle is with life insurance death benefits and tax-advantaged retirement accounts.

For example, whoever you designate as the beneficiary of your life insurance policy will automatically receive the death benefit proceeds. It doesn't matter what your will says about who should receive the money.

Similarly, the person or persons designated as the beneficiary of your tax-deferred retirement account, traditional IRA, or Roth IRA will automatically receive that money by "operation of law." It makes no difference if your will contains contrary instructions.

The same is true with most joint bank accounts. The surviving joint owner receives the balance after the death of the other owner.

*Another example:* When you co-own real estate with someone in "joint tenancy with right of survivorship," (or with your spouse as tenants by the entirety), that co-owner automatically inherits the whole property, regardless of what your will states.

You may have other assets that are affected by the "operation of law" rules. Talk with your estate planning advisor to ensure your wishes are carried out.

In some cases, assets have passed to an ex-spouse because an account holder did not update his or her beneficiary designations after a divorce.

In another case, a man's stepsons did not receive his company pension plan benefits despite the fact that the rest of his estate was left to them. The reason is the man didn't expressly name his stepsons as beneficiaries. Eventually, the plan administrator turned to the terms of the pension plan to decide who to distribute the money to if there was no surviving beneficiary named. The money went to the man's siblings. If he had simply named primary and secondary beneficiaries, his wishes would have been known. (*Herring v. Campbell*, 5th Circuit 2012)

*Note:* In many cases, if no beneficiary is listed on a pension plan, the money goes to the estate.

## An Effective Will

Here are three basic things you should cover:

**Executor Designation.** The executor is the person who becomes legally responsible for wrapping up your affairs after you die. He or she will pay outstanding bills, file any necessary tax returns, make tax payments, and dole out the remaining assets as instructed by your will. You should name at least one alternate choice, in case the first choice doesn't work out.

**Asset Disposition Instructions.** A properly drafted will generally heads off disputes regarding which heirs get which assets.

**Guardian Designation.** The guardian takes legal charge of your minor children, if you (and your spouse) die. Designate at least one alternate in case your first choice is unable to fulfill the role. Keep in mind that the probate court will be persuaded by your stated wishes but they are not binding.

So revise your will if necessary and be sure to get all your beneficiary designations and real property ownership arrangements in line with your current intentions about who should receive various assets after you die.

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