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## **It Starts With a Will**

A good estate plan only starts with well-drafted documents. Whether a person uses a Last Will and Testament or a combination of a Will and a “living trust,” paying attention to the details of how property is titled and what beneficiary designations are made for “non-probate” assets is essential. It’s coordinating a person’s economic reality to the documents.

I frequently see situations where more than half a family’s wealth consists of an IRA, 401(k) account and life insurance. In those cases part of my responsibility as an estate planner is to alert the client to the need for intelligent choices of the beneficiaries for those assets and to help the client to implement those choices.

Consider the hypothetical case of Mr. & Mrs. Hitech. They both work for telecommunications companies. They have three children: two from their marriage and one from Mrs. Hitech’s previous marriage, with the oldest (hers) attending college at the University of Georgia. Each of them has life insurance policies and retirement accounts that add up to \$1,000,000. They have real estate (which is jointly titled with right of survivorship) and financial assets besides those in the retirement accounts that add another \$200,000 to the family “estate.”

No matter how they do their wills, the beneficiary designations on the retirement accounts and life insurance will be pivotal in the transmittal of wealth to the surviving spouse and children. If the spouse is the sole beneficiary, there is a real possibility that about \$2 million of family wealth will be controlled by the wishes of whoever happens to be surviving spouse. If there is a trust in the will of the first spouse to die, that trust may never see more than \$100,000 if all of the assets controlled by beneficiary designations were not directed to the trust with the appropriate beneficiary designation.

There are several challenges facing Mr. & Mrs. Hitech: (1) Do they want to treat the children from the different marriages equally in the division of assets? (2) How do they make sure that all of those non-probate assets go into a trust for the children in the event that there is no surviving spouse? (3) Do they need some estate tax planning because the family wealth (including the life insurance) exceeds the \$2.0 million threshold (as of 2006) for the federal estate tax? (I mention the year because that threshold is scheduled to increase to \$3.5 million on January 1, 2009.)

For a married couple who have children from two different marriages, there are two common approaches: one is to treat all of the children as one class of beneficiaries who will receive equal shares from the combined wealth of the husband and wife after both of them have died; a second approach is to identify particular property as going to a child or children (often in a trust) with the balance going outright to the spouse.

The first approach requires that the surviving spouse hold to the plan after the “first death,” even if there is a second marriage. The alternative would be to use a trust to hold the property of the first spouse to die for the benefit of the surviving spouse with a final distribution to the children after the “second death.” But there is a pitfall even with a conservative approach. Assume a trust that will ultimately benefit the children is built into the plan. The beneficiary designations for the life insurance and

retirement accounts must be updated to designate the trust, or if the client wishes, the spouse individually, or a mix of the two.

Even a “conventional” family can run into trouble. If it is a younger family, then minor children could be mistakenly named as direct “secondary” beneficiaries of life insurance or retirement accounts. Instead (most of the time) the secondary beneficiary for the life insurance and the retirement accounts should be a trust for the minor children.

An older couple often faces the dilemma that the surviving spouse could be disabled. Usually the spouse should not be named as the direct beneficiary of a sizeable retirement account. Instead a specially designed trust should be receiving the account with that surviving spouse as the sole beneficiary of the trust during that person’s remaining life.

It should be obvious by now that drafting a good set of documents is only part of the solution. A person must formulate a plan to coordinate the economic reality with the legal documents. Otherwise those documents could be like someone who is “all dressed up with no place to go.”

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Patrick J. Gibbs practices law in Roswell, GA with a concentration on Wills, Trusts and Estates. This article is intended to be educational. Legal advice should be obtained as to individual needs before taking any action.