

“Where there’s a Will...”

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For many, the word “Probate” is often misunderstood and also is a matter that many of us do not want to think about until we are personally involved with the death of a loved one or relative. Probate is the process of administering an estate upon an individual’s death. It involves a validation of a Will by the Probate Court or making the determination that there was no Will left behind. In either case, a person is appointed to administer the estate, pay debts of the estate and ultimately transfer the assets to the beneficiaries or heirs. Fortunately, Georgia has a modern probate code with costs that are usually modest as compared to some other states. Typically, the court costs (including filing fees and publication fees) for the probate of an estate are less than \$500.00. Statewide, you will find that our probate judges are highly qualified and are very interested in making the process as simple and stress free as possible.

Whether you have a Will or not, if you have assets and/or debts at the time of your death, the probate of your estate will most likely be necessary. With that said, most attorneys would advise you to have a proper Will drafted. There are numerous advantages to having a Will. Foremost, you decide how your property will be distributed. If you do not have a Will your estate will be distributed according to law and not necessarily according to your wishes. For example, your surviving spouse would share your estate with your children. I have found that most people prefer that their property pass directly to their spouse and then to the children after the death of both spouses. Further, a simple Trust set up in the Will can insure that if you and your spouse both die, you can decide at what age the property would be distributed to the children. A Trust can also include provisions for whom you would want to serve as a guardian and trustee for your minor children.

Something to keep in mind is that a Will only controls property passing through your estate. Your probate estate consists of all property that you own at the time of your death. These assets include cars, personal property, bank accounts in the name of a single spouse, and real estate held in your sole name or owned without survivorship provisions. Many times a significant portion of a person’s estate is not controlled by a Will. Assets such as life insurance, investment accounts with beneficiaries, joint bank accounts and real estate owned jointly with

survivorship pass outside of the Will. An attorney can review all of the assets and advise you whether your estate plan meets your specific desires. Devices as mentioned above have spawned much advertisement concerning techniques to avoid probate. One should consider the cost of such plans and whether such techniques serve your overall estate plan. One instance where it may be advisable to avoid probate is in the case where you own real estate in two different states. For example, if you own real estate in Georgia and Florida, you may want to put ownership in one of the properties in a Revocable Living Trust in one of the states so that the trust property passes to the beneficiaries outside of probate.

This information merely touches on some issues involving estate planning but hopefully, will remind you that everyone should consider having a Will properly drafted and in place regardless of your wealth or age. If your Will was prepared in another state you should have it reviewed by a Georgia attorney. Also, it is a good idea to periodically have your Will reviewed, especially if your estate changes significantly due to inheritance, birth, death or other factors. In summary, Wills help to ensure that your loved ones receive your property according to your wishes with as little stress as possible.

John Mahan is an attorney in Ellijay, Georgia. His practice concentrates in real property law as well as matters involving probate and estate planning, corporate and personal injury. The office is conveniently located less than one mile from downtown Ellijay. From the square in downtown Ellijay, go north on Main Street, pass City Hall and the Ellijay River Bridge. The office is a short distance on the right.