

The Diamond Earrings: Another Word about Ethical Wills

A word from Attorney John L. Laster

If you challenged me, “Sit down right now and quickly record the values that you would like to pass on to your descendants – your ethical will”, my certain response would be writer’s block – immediate and probably permanent. But if you asked me to tell you what stories have meant the most to me, that wouldn’t be so hard – and I might then be able to meet your challenge.

My father’s family tells a story about a pair of diamond earrings. My grandfather couldn’t afford an engagement ring for my grandmother. The two agreed to pool their labor and earnings over time so they could buy a particular pair of earrings, which the dealer kindly set aside for them. When they finally went to purchase them, my grandfather said, “I am putting diamonds on a diamond.”

Having been expelled from New York City for union organizing, my grandparents found themselves in Dickson City, PA, where there were two industries: coal mining and providing goods and services to coal miners. My grandfather decided to peddle potatoes, tomatoes, and other produce; coal miners have to eat, after all. To peddle, however, he needed a cart and a horse for which my grandparents pawned the earrings. They earned enough to repay the loan and reclaim the earrings only to pawn and redeem them again and again – to rent a store, then to buy a house with a store in the front, then to purchase a Model T and convert it to a truck for the business. The earrings later financed several family moves, and then

college, graduate school and law school educations for five children. No one thought that the family story was being written when my grandparents successively pawned and redeemed the earrings; my grandparents certainly had no such intention. In retrospect, however, it does tell a



“... my grandfather said, ‘I am putting diamonds on a diamond.’”

Will Preparation: The new “Do it Yourself” Project By Keri Phillips

When I think about so called do-it-yourself projects, or “DIYs,” images of gardening, hanging shelves, tiling a bathroom and painting the shutters on my home come to mind. Nowadays, however, DIY projects are not limited to home repair. If you have a home computer, you can do everything from filing your taxes to trading stocks to preparing your will.

In the not so distant past, these tasks were always left up to professionals. Now, with the click of a mouse, you can be transformed into your own personal doctor, accountant, financial advisor and now lawyer. One advertisement even boasts, “Finish your Last Will and Testament in 15 minutes.” This concept didn’t sit well with me. I found myself thinking, (continued on pg. 4)

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Now that you have taken the time to prepare your Estate Plan, have you discussed it with your loved ones?



When children turn 18 and are legally adults, there is no better time to have a simple Will and Powers of Attorney drafted.

Gratis: A Will and A Power of Attorney

A simple way for parents to protect their children By Keri Phillips

Eighteen is a powerful age. Children legally become adults, and many of them “leave the nest” to pursue higher education, travel the world or begin working. Whether these children are in the next city, a neighboring state, across the country or across the world, parents often find it difficult to adjust to the fact that 18 year-olds have virtually the same rights as a 50 year-old. To help ease this transition into adulthood, we offer complimentary wills and powers of attorney to the children of our existing clients who are between the ages of 18-22.

You are probably thinking, what could my child possibly need with these documents? They don’t have any assets to plan for! Although the will of an eighteen year-old is likely to be quite simple, it’s a good practice to begin.

The powers of attorney can prove to be invaluable. Once a child reaches eighteen, banks, doctors, law enforcement and all government institutions treat them as independent adults (no matter how dependent they may still be financially), and

you will need documentation such as a power of attorney in order to make decisions on their behalf.

For instance, imagine your eighteen-year old child is on spring break in Colorado, whitewater rafting with friends, and becomes injured. Important health care decisions need to be made but your child is in no condition to make them. What do you do? A health care power of attorney that names you as your child’s agent can be crucial in this situation. It’s particularly critical since health care institutions may not release health records – even to a parent – without a power of attorney!

A parent never wants to imagine that injury could befall their child, but having powers of attorney for health care and finances in place can be very helpful. Who knows your child better than you? Any parent can imagine the importance of these documents in “what if” situations. Having the documents in place takes out the “what if’s” and gives piece of mind to

Beneficiary Designations: Have you overlooked yours?

By Chris Tomlin

Many of you can relate to the experience of setting up a bank account or brokerage account and being asked to fill out a “beneficiary designation.” The purpose of this form is to designate who will receive the balance of your account in the event of your death. Often these beneficiary designations are made with little deliberation, almost as an afterthought. It is important to recognize, however, that beneficiary designations can play a pivotal role in your overall estate plan.

Assets with beneficiary designations pass outside of probate. This can be very helpful, as your estate will save on probate fees, and your beneficiaries will generally receive these assets more quickly than they would if the assets needed to pass through the probate system. Therefore, beneficiary designations can be a useful tool in planning an estate. However, some potential pitfalls may occur if beneficiary designations are not coordinated with other aspects of your estate planning.

WINDFALL

Many people do not realize that a beneficiary designation will likely trump any disposition made in a will or other testamentary document. Therefore, if you execute a will that divides your entire estate equally between your son and daughter, but your beneficiary designation for your bank account names only your daughter, she will receive a windfall – the entire bank account, plus half of your probate estate. This scenario can be easily avoided by making sure your beneficiary designations match up with your other distributions.

OUTDATED BENEFICIARY DESIGNATIONS

It is extremely common to name one’s spouse or domestic partner as a designated beneficiary on an account. Unfortunately, divorce and separation are also common, and most people would be distressed to learn that, by virtue of a long-forgotten beneficiary designation, their “ex” was entitled to the proceeds of their account. The opposite could also occur – beneficiary designations completed prior to a marriage or partnership could wind up benefiting your siblings or parents

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Ethical Wills (continued from page 1)

It speaks about sacrifice, hard work, the perceived value of education, and the love of what is precious. My father was the one who saw the pattern.

The earrings financed other family ventures as well – some which, in retrospect, I think showed lack of good judgment. Had the earrings not been used to finance those ventures, the family would have had to learn a different set of

skills, another way of solving problems. That assessment, however, is the next generation's conclusion. So, the story and its significance keep changing, as do the values that the story communicates.

What are your family's stories? Is there a story that you heard from a parent that has grown in significance over time? If so, it may form the solid base of an ethical will.



Still have questions?
Give us a call.
703-538-3600

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just like estate planning documents,
should be reviewed after any major life change.”

Beneficiary Designations (Continued from pg. 2)

at the expense of your new spouse or partner. Beneficiary designations, just like estate planning documents, should be reviewed after any major life change.

TRUSTS

Many of our clients with young children create estate plans that leave money to those children in trusts, appointing specific trustees to handle the money and permitting the children to receive distributions at specific ages. The purpose here is often to prevent young adults from receiving a large infusion of cash before they know how to manage it responsibly. This effort can be undermined, however, if these young adults are named individually on beneficiary designations – the funds from that account would then pass to them outright, free of trust! Parents who establish trusts, therefore, should name the trust as the beneficiary on their accounts. Since grandparents and other relatives may also have named your children as their beneficiaries, these parties should be instructed to do the same.

A particularly problematic example of this pitfall occurs when a disabled beneficiary receives an outright distribution from a beneficiary designation. This sudden infusion of available cash will often jeopardize the disabled beneficiary's eligibility for means-tested government benefits. Often the only remedy after this has occurred is to create a “self-

settled” special needs trust (that is, a special needs trust funded with the assets of the disabled beneficiary), which can be a costly and time-consuming process. Relatives of a disabled beneficiary can prevent this problem by creating a “third-party” special needs trust (that is, a special needs trust funded by people other than the disabled beneficiary) beforehand and directing all assets, both by will and by beneficiary designation, to pass to that trust.

IMPRECISE BENEFICIARY DESIGNATIONS

Say you have two sons named as equal beneficiaries on your account, and each son has children of his own. Your intent may be that if one son dies before you, his share of the account would pass to his children. However, absent language such as “equally to my two sons, or to their descendants by right of representation,” the surviving son might inherit the entire account, and the children of the predeceased son could be left out. Beneficiary designation forms often fail to provide sufficient space for detailed distribution plans, so it is sometimes helpful to submit a separate letter to accompany your beneficiary designation.

CONCLUSION

Beneficiary designations can be a useful tool, but please remember their ramifications when planning your estate, as a flawed beneficiary designation can frustrate the intent of an otherwise well-designed estate plan. We will be happy to help you coordinate your beneficiary designations as part of an overall estate plan.




**Law Offices of
John L. Laster**

John Laster, Esq.
103 Rowell Court
Falls Church, VA 22046

Phone: 703-538-3600
Fax: 703-538-3601
E-mail: admin@trusttolast.com



www. TRUST TO LAST.com



Please send your e-mail
address to:
[admin @trusttolast.com](mailto:admin@trusttolast.com)

Will Preparation: The new “Do it Yourself” Project

(continued from pg. 1)

“what it took me a lifetime to build could be summed up and dispersed to my loved ones in 15 minutes; how is this possible?” So, I signed onto a couple of the sites and I was surprised by what I discovered—it is possible.

Simply fill in the blanks on the online forms and *voilà*; it takes more time to wait in the morning line at Starbucks or read through the newspaper headlines than it does to prepare a will. The more I thought about this, the more unsettled I became. How could this computer accurately summarize my estate and delineate who gets what with thirty simple questions? For instance, if I have a blended family, and I have not adopted my spouse’s children but I treat them as my own, how does the document define a “child”? If I want to minimize taxes on my estate in a particular way, is my will set up so that I can? How can I be sure that the document is accurate and legally binding in my state?

Without consulting an attorney, there is no way to know for certain. Every state has different laws regarding the preparation of a will, from what can be included to how the document is to be signed. A mistake in any part of the drafting process renders the will useless and then you are left with a worthless stack of paper.

Also, remember that a Will is just a part of an estate plan. For most, designing an estate plan will also require preparing a durable general power of attorney, and a health care power of attorney. Very simply put, a general power of attorney gives someone the right to make financial decisions on your behalf, and a health care power of attorney gives someone the right to make medical decisions on your behalf. In both of these documents, the language used is specific to the financial and healthcare industry respectively. Without knowing, you could give your agent

intend, or neglect to give them powers that they need to exercise your wishes. At the end of the day, I am not comfortable preparing my own legally binding documents and acting as my own financial advisor, doctor, lawyer and editor. After all this is my *last* Will and testament; there are no re-dos.

They say that “nothing in life is certain except death and taxes.” When it comes to relying on a computer program to interpret my final wishes and know what I *meant* to say, no thank you. If I make a mistake on my taxes, I can rest assured that the IRS will let me know, but if I make a mistake on my will, that is a mess that I leave for my next of kin. This is one task that I want to leave to the professionals.