

## COMMON ESTATE PLANNING MISTAKES

There is often much confusion surrounding the role of a person's Last Will and Testament. It is not unusual for unintended distribution results to occur because of a lack of understanding regarding the difference between probate and non-probate property. For instance, a person may have a fairly simple Will that specifies that their entire estate shall be divided in equal shares among their children. However, if any of that person's assets were held jointly with one of the children or if any of the assets had a beneficiary designation, the Will would not control who received those particular assets.

An example of an unintended distribution result would look something like this: Mary has five children and was predeceased by her husband. Her Will specifies that her five children are to receive her estate in equal shares. At the time of her death, Mary owned a house worth \$100,000 in her name alone and possessed several checking and savings accounts and CDs at her local bank, all of which were placed into joint name with her oldest daughter, who was handling her financial affairs prior to her death. These jointly-held bank accounts also totaled \$100,000. Most people would assume that the resulting \$200,000 estate would be distributed to Mary's five children in the amount of \$40,000 each. In reality, the oldest daughter would receive the entire \$100,000 in jointly-held assets by right of survivorship, since jointly-held assets are not subject to distribution under the terms of a Will. The proceeds from the sale of the residence, which was the only probate asset, would be divided among all five of Mary's children pursuant to the terms of her Will, resulting in the oldest daughter receiving a total of \$120,000 and the remaining four children receiving \$20,000 each.

This situation could have been avoided, had Mary consulted with an estate planning attorney and modified the terms of her Will, either to specify that it was her intention to leave certain non-probate assets to her oldest daughter to compensate her for taking care of Mary in her later years or, conversely, to specify that it was her intent that all five of her children would receive identical pecuniary amounts from her estate and giving the executor of her estate the discretion to adjust the shares received by her children to reflect any amounts that passed to any of the children by non-probate methods.

If you have questions regarding how your estate would be distributed, consultation with an experienced estate planning attorney is highly recommended.