



Will Power

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MY WILL GOVERNS, RIGHT?

Does your will say who gets what at your death? Does it govern all of your assets? The answer to these questions may surprise you.

Despite what your will says, there are many types of assets and situations where what the will says really doesn't matter at all. Suppose that a fictional "Barry" has a will that leaves everything to his son, "Junior". Below are examples where it doesn't matter what Barry's will says, Junior isn't getting the asset:

Trust assets – If the asset is owned by a trust, and if the trust says that someone other than Junior receives it, then Junior doesn't receive the asset;

Jointly Owned Asset/Property With Rights of Survivorship – If Barry opened a bank or brokerage account and titled the account with "Tina" jointly with rights of survivorship, then Tina takes the account on Barry's death, not Junior;

Spouse Elective Share Rights – If Barry is married to Tina, and even if she isn't on the account nor is she mentioned in Barry's will, Tina has a legal elective share right which might mean she takes the account or some portion of it;

Homestead – If Barry is married or has a minor child at the time of his death, then Junior may not inherit a fee simple interest in the Florida residence that is homesteaded even if Junior is named as a direct and full beneficiary of the home;

IRA, 401(k) and other Retirement Accounts – If Barry hasn't completed and signed a beneficiary form naming Junior as the beneficiary of these accounts, Junior may not inherit them even though the will may name Junior as receiving these interests;

Life Insurance and Annuities – Like the retirement accounts, these assets have separate beneficiary designations. If the beneficiary designations name someone other than the beneficiary of the will, the beneficiary designations usually control.

As you can see, making sure that your intended beneficiaries receive what you want them to receive is not as simple and straightforward as many believe. There are other issues too complex to describe in a short column, such as which assets pay the taxes and expenses of your administration. You should advise your estate planning attorney about all of your assets and bring to him your current financial statements and beneficiary designations so that he can determine

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