



What to Do When BEST-LAID PLANS Go Awry? MODIFY THEM!

by Amy Woods • Photo by Susan Green

Changes in Florida Law Offer Flexibility in Altering Irrevocable Wills and Trusts, Attorneys Say

As one attorney from a prominent Palm Beach County law firm says, anybody can make a mistake. This is true when balancing a checkbook, building a house, or even drafting a will or trust.

John C. Moran, an estate attorney at the law firm of Gunster in its Private Wealth Services practice, says that even carefully considered estate plans can fall victim to oversight, unanticipated errors, or a change in circumstances that can thwart the final wishes of the deceased.

A husband and wife adopt a child, for example, and before they have a chance to meet with their lawyer to update their wills, the couple dies in an automobile accident.

“A classic case is that Dad dies, his kids look at the will, they may fight a little bit, and then they realize that there’s a mistake,” Moran said. “An adopted child is left out, for example, and the adopted child is now left with nothing. Everybody reacts with concern because he was not supposed to be left with nothing and they ask, ‘How do we fix it?’ The answer is in the Florida courts.”

In 2007, the state legislature invoked a series of policies that permit beneficiaries to modify irrevocable trusts in order to deal with changed circumstances, minimize taxes and correct mistakes. The legislature applied some of the same policies to wills in 2011, unprecedentedly allowing certain individuals to

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John C. Moran



Nicklaus J. Curley

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alter the terms of the document after the death of the testator.

“Prior to enactment of this law, unlike in the case of a trust, there was nothing that could be done to rectify an error in a will,” Moran said. “Now, however, interested persons can petition a Florida court to fix a mistake in a will in order to make sure that the will properly reflects the drafter’s intentions.”

Problems may occur during the will-writing process when clients draft their own documents or use online forms or software programs to do so, he said. His advice: hire a professional.

“You’re better off by meeting with a competent professional and making sure it gets done correctly,” he said.

The actions by the legislature represent an ideological shift from the days when decedents controlled from the grave, sometimes to the detriment of their beneficiaries. Moran expects the modern trend to continue.

“Before the laws changed, the rule was that the ‘dead hand’ controlled,” he said. “In other words, a person could control their assets from the grave. Some people view these changes in the law as an ero-

sion of the dead hand. Now people can actually go back and rewrite a person’s will. Personal opinions aside, this is the law of Florida. The legislature has made a policy decision.”

Nicklaus J. Curley, an associate at Gunster, said everyone should have a will, regardless of their marital, parental or financial status.

“You should always have a will,” Curley said. “If you don’t have one, there is a Florida statute that determines how your assets get paid out.”

Moran and Curley have seen the best-laid plans of their clients go awry because of life changes, economic decline, health issues – or something as simple as the lack of enough witness signatures on the will. Their responses to questions about when someone should obtain a will and how to avoid common pitfalls are below.

PBGLM: Why is having an updated will so important?

Curley: Having an updated will is important because it allows people to determine who will receive their assets after their death. A will also allows people to select who will be in charge of admin-

istering their estate in order to make sure their wishes are followed. People can update or change their will any time before they die. It is important to make sure that a will is updated so that it complies with, and takes advantage of, any changes in the law.

PBGLM: How often does a will need to be updated?

Moran: It is a good rule of thumb to consider updating your will yearly. Individuals should also consider updating their will with a marriage or divorce, the birth of a child, the sale or purchase of real estate, the death of an heir or changes in the tax laws.

PBGLM: What is the best age to have a will?

Curley: Your first job, getting married, having kids – that’s usually when most people start thinking about it. Also, anybody who comes into wealth should have a will if you want to have any control over what’s going to happen. Same-sex couples with no spousal rights – they should have a will. Generally, it’s always a good idea. **PBG**

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