

# The Importance of a Will<sup>1</sup>

**By: John M. Moorhead, Esq.**<sup>2</sup>

Moorhead Law Firm LLC  
314 Residence Avenue  
Albany, Georgia 31701  
(229) 431-0900

## **Introduction**

Your will is not important if you have made definite arrangements to live forever in this life. Unfortunately, death is inevitable for everyone. Since none of us knows when it will strike, it behooves each of us to have our affairs in order at all times.

With regard to estate planning, there are two possible situations that may exist at your death: 1) you can die with a valid will or 2) you can die without a valid will. The following chart highlights the major differences between dying with or without a will:

<u>Issue</u>	<u>With a will</u>	<u>Without a will</u>
Personal Representative	Named by you	Named by the Court
Beneficiaries	Designated by you	Specified by Law
Bond	May be waived	Required by Law
Reports to the Court	May be waived	Required by Law
Major decisions	Made by Personal Rep.	Requires Court approval
Guardian of children	Named by you	Named by the Court
Expense	Hundreds of dollars	Thousands of dollars

The major advantages of having a will are as follows:

1. You, not the law or the court, make all the decisions regarding your property and the care for you children.

---

<sup>1</sup> I want to credit most of the material in this note to my father, William D. Moorhead III, who has always been there for me and along with my mother has taught me the true and meaningful lessons of life.

<sup>2</sup> John M. Moorhead is a partner in the Moorhead Law Firm LLC, which focuses its practice in estate planning and corporate representation. He graduated *Summa cum Laude with Honors* from the University of Georgia's Terry College of Business with a BBA in finance. He then graduated *cum Laude* from the University of Georgia School of Law where he was the chairman of the Moot Court Board, member of the Lumpkin Inn, and recipient of the Kerry Harike Joedecke Award of excellence given to the outstanding Moot Court graduate each year. John is married to the former Amanda Leigh Hardee of Sugar Hill, Georgia and is the proud father of Elizabeth H. Moorhead and William D. Moorhead IV. He may be contacted at work at 229-431-0900.

2. Having a will eliminates the red tape of securing bonds and filing reports to the court.
3. The administration is much less expensive.
4. Many controversies are avoided.

Simple wills cost about \$200 plus a nominal consultation fee at most law firms in Albany. Thus, for approximately \$400 both a husband and wife can have wills to control their estates. Without the wills, the cost of administration will be much greater, which makes having a will cost effective for the ones you leave behind.

### **Cost saving measures**

To further cut down on the costs of administering your estate, you can take a couple of simple steps. First, you can open joint accounts with people whom you wish to leave property to. For example, a husband and wife can designate their bank accounts as joint accounts payable on death (POD) to the joint owner. Therefore, if the husband dies first, the wife would get all of the money in the account automatically without having to go through probate to transfer the funds. Second, property, both real and personal, can be deeded or titled to people as joint tenants with right of survivorship (JTWROS). For example, a husband and wife can own their home as JTWROS and upon the death of one of the spouses, the other spouse will automatically own the home outright without having to go through probate. Finally, you can gift property to people before you pass away. There are some restrictions and possible tax ramifications to this option; so, you should consult with an attorney before making substantial gifts to anyone (i.e. over \$13,000 to any one person within one year).

Please remember that it is still important to have a valid will in place at your death even given the above options because there will always be property left in your estate that must go through probate. It is inevitable. One important example is the personal property in a home owned as JTWROS. The furniture, personal effects, etc. do not pass to the joint owner upon death. Only the house passes automatically. All of the personal property must pass according through the estate of the deceased, which makes having a will very important.

### **Validity of a will**

To this point I have used the term Avalid when describing the type of will you should have. Basically, Avalid means that the will meets all of the formal requirements of the law; is the product of your will and not someone else=s; disposes of all of your property; and is executed in the proper manner. The legal requirements one must satisfy to make a valid will are

complex and are exact. A minor infraction of a statutory requirement will subject your will to a challenge from a disgruntled family member. Since no one wants a laughing heir (someone who gets your property because of his blood relationship to you, but whom you have not seen in years or even worse -- dislike), it is important for you to visit a lawyer and engage him to draft your will for you. The lawyer will also assist you in executing your will properly. I have seen many wills written by individuals without an attorney and have not seen a single one that was done properly. They usually complicate matters worse than if the person had died without a will. You can not save money with an invalid instrument.

Some of you may have a will and may wonder if it is valid. If it was drafted by an attorney and executed in his office, chances are that it is fine. If you wrote it yourself without the aid of an attorney you should certainly have an attorney review it. You should also know that there are several major life events that affect the validity of a will. If any of the following events have occurred since you executed your will, an attorney should review it to let you know the affect of the event on your will=s validity and testamentary scheme:

1. Marriage
2. Divorce
3. Birth of child or grandchild
4. Death of child or other named beneficiary
5. Substantial change in net worth (higher or lower)
6. Move from one state to another
7. Death of the witnesses to the will

It is a good idea for each person to review his will every three to five years to make sure he still wishes to leave his property as it is written.

### **How to choose an attorney**

You will need an attorney to prepare your will. The choice of an attorney is very important. I suggest you begin by looking for an attorney who specializes in estates and estate planning. Ask your friends and close business associates for referrals. Word of mouth is the best advertising for attorneys.

Once you find an attorney, make sure to ask him what he will need to assist you in preparing your will. He will probably want to see your financial statement and titles to all of your assets (bank account statements, deeds to real property you own, life insurance policies, brokerage account statements, etc.) before advising you. By bringing those items to your first conference, you will save time and money. Remember, it is important that you go to an attorney that you can trust with this valuable and sensitive information. It is necessary for an attorney to see this information in order for him to advise you appropriately.

## **Coping with disability**

The second great risk people face is disability. Disability can be handled by a power of attorney or through a guardianship. These two options can be illustrated as follows:

<u>Issue</u>	<u>Under Power of Attorney</u>	<u>Under Guardianship</u>
Personal Representative	Named by you	Named by the court
Bond	None	Required by law
Reports to the court	None	Required by law
Major decisions	Made by Personal Rep.	Requires court Approval
Expense dollars	None	Thousands of

A general power of attorney can empower your trusted family member to take any action he deems appropriate in your best interests. More sophisticated arrangements to control beneficiaries, investments, etc. can be made through the formation of trusts, but in most cases the power of attorney will suffice. Most law firms will draft powers of attorney for about \$75-95, which is far less than the cost of establishing a guardianship if one is needed.

The second type of power of attorney is advanced directive for healthcare. This instrument allows you to designate a person to make your medical decisions for you in case you are incapacitated. This person can either fight for your life or terminate life support in the event that you are in an irreversible coma or vegetative state requiring constant life support machines. This takes those decisions out of the hands of a doctor who may or may not have your best interests at heart. I highly recommend you execute a general power of attorney and an advanced directive for healthcare when you execute your will.

## **Conclusion**

If you care about your loved ones you will leave behind when you pass away, please take a moment to evaluate your estate planning. If you are confident your will is valid and disposes your property as you wish, then just remember to check it every few years, but if you do not have a will or if for some reason you think it may be invalid check with an attorney to make sure it is valid and expresses your will. Many families break up over disputes concerning a deceased loved one's property. Try to prevent your loved ones from fighting by planning the disposition of your property before you pass away. Remember, you do not engage in estate planning for yourself; but rather, you engage in estate planning for the people and worthy causes you leave behind in this life.