



## TEN (10) THINGS THAT ATTORNEY KEITH R. MILES WANTS YOU TO KNOW ABOUT ESTATE PLANNING IN THE STATE OF GEORGIA

### 1. "I DON'T HAVE ENOUGH ASSETS". MOST PEOPLE HAVE PLENTY OF THINGS TO PLAN FOR:

- Guardianship & Conservatorship for Minor Children (i.e., under the age of 18)
- Financial Accounts (i.e., 401(k), IRA, Bank Funds, Stocks, Life Insurance, etc.)
- Handling Real Estate (i.e., Primary Residence, Rental Property, Land, etc.)
- Business Succession Planning (i.e., LLC/Partnership interests, Corporation shares)
- Passing along Personal Property (Automobiles, Jewelry, Collections, Artwork, etc.)

### 2. IF YOU CHOOSE TO NOT MAKE A WILL, THE STATE OF GEORGIA HAS A PLAN FOR YOU.

- Georgia's "Intestate" laws are for those without a Will and who have property, both tangible and intangible, under the control of the Probate Court
- Georgia makes distributions by blood relations (which includes adopted children)
- There are no stepparent/stepchildren considerations under intestate laws
- No consideration to "Mom or Dad told me he/she wanted me to have that"

### 3. DOING A "SIMPLE WILL" CAN HAVE VERY DETRIMENTAL RESULTS

- Almost half of all marriages today are at least the second marriage for one of the partners. If you leave all your property to your spouse, you run the risk that your children (those who are not also children of that spouse) may be disinherited.
- If you leave all your property directly to anyone (i.e., spouse, children, sibling, friend, etc.), that property can be subject to being lost to poor spending, creditors, a divorce settlement, a lawsuit, long-term care costs, etc.

### 4. ESTATE PLANNING IS FOCUSED ON PLANNING FOR YOUR ENTIRE LIFE AS WELL AS DEATH

- Disability planning with Durable Powers of Attorney, Advance Directives for Healthcare, Guardianships (Court appointed person to manager your personal decisions) and Conservatorships (Court appointed person to manage your money).
- Long-Term Care planning through asset protection trusts, personal savings, long-term care insurance/life insurance and/or public benefits (i.e., Medicare/Social Security Disability (SSDI), Medicaid/Supplemental Security Income (SSI), Veterans Pension (Aid and Attendance/Housebound).
- Special needs planning with special/supplemental needs trusts and ABLE accounts.

### 5. CHOICES OF A GUARDIAN FOR MINOR CHILDREN MUST BE MADE BY WILL

- A biological parent, by will, may nominate a guardian for the parent's minor child.
- *Unless the minor has another living parent, upon probate of the minor's parent's will*, letters of guardianship shall be issued to the **individual** nominated in the will.
- The probate court has no jurisdiction in cases concerning loss of custody by a parent or guardian due to cruel treatment, abandonment, or immoral conditions.
- *There is no authority vested in the judge of the probate court to displace a parent as guardian of the person of a minor (i.e., one biological parent's Will cannot direct the Probate Court not to send a child to the other biological parent)*
- *The judge of the probate court cannot appoint a permanent guardian of a minor with a living parent unless that parent's rights have been terminated (i.e., after the first parent passes away, custody would have to be pursued in Family Court by those who oppose the other natural parent getting the minor child).*

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### 6. THE POWER OF ATTORNEY MAY BE THE MOST IMPORTANT ESTATE PLANNING DOCUMENT

- A Power of Attorney can potentially open the door to theft by the agent(s)
- Potential for “financial abuse”, particularly among the elderly population
- The estate planning cannot give you a Power of Attorney over someone else. That individual must make and execute the document by themselves.
- The estate planning attorney will need to communicate directly with the person that would give the POA. We need to determine whether s/he has the mental capacity.

### 7. OFTEN BANKS AND FINANCIAL INSTITUTIONS DO NOT HONOR POWER OF ATTORNEY FORMS.

- Many banks and financial institutions are very cautious about allowing agents under POAs to perform financial transactions. They are concerned that the agent’s power under the POA may have been revoked. They are worried about being liable.
- The financial institutions often feel more protected against lawsuits if you complete their own internal POA form
- If they do reject your POA, the agent you appointed in the POA can force them to accept it only if you utilized the Uniform Power of Attorney form.

### 8. WILLS DO NOT CONTROL EVERYTHING. KNOW YOUR BENEFICIARY DESIGNATION FORMS

- Many financial items and real estate are transferred directly using beneficiary designation forms. (Examples are: 1. Qualified retirement plans (i.e. 401(k), 403(b)), 2. IRA (Traditional & Roth), 3. Life Insurance policies, 4. Real estate and bank accounts by Joint Tenancy with right of survivorship, 5. Stock Accounts, etc.)
- Qualified plans under the federal rules known as ERISA (i.e., 401(k)) must make the “spouse” the primary beneficiary (anywhere from immediately to up to 1 year after marriage). NOTE: IRAs are NOT under ERISA.
- However, if a beneficiary designation forms either lists the Estate as beneficiary OR there are no known living beneficiaries, the financial institutions may pay the money to the Probate estate where the Will (or Intestate rules) could control them.

### 8. GEORGIA IS THE ONLY STATE THAT ALLOWS FOR THE DISINHERITANCE OF A SPOUSE

- In all other states (and the District of Columbia), the surviving spouse automatically has a minimum ownership interest in the estate of the deceased spouse.
- In all other states, either the surviving spouse’s interest would occur through that state’s community property laws or an action on the part of the surviving spouse in Probate Court called an “elective share”.
- If the deceased spouse died without a will (i.e., “intestate”), the intestate rules of Georgia do grant a minimum share to the spouse of 1/3). NOTE: This share could go up to either 50% or 100% depending on the number of other “heirs”.

### 10. GEORGIA’S YEARS’ SUPPORT ACTION GIVES PRIORITY TO SPOUSES AND/OR MINOR CHILDREN

- Petitioners (i.e., surviving spouse and/or minor children) would request that the property belonging to the estate, whether there is a Will or not, be awarded to them.
- All creditors of the decedent, all heirs and beneficiaries (if there is a Will), and other interested parties are required to receive notice.
- If no Caveat (i.e., challenge) is filed to the petition, the Court MUST issue an Order granting the entire request.

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