

WHEN THERE'S A WILL, THERE'S A . . . WILL

Don't Procrastinate. This Legal Deadline Cannot Be Extended

Column: David Lefkowitz

Life sometimes feels like one big deadline. At work, the sales report is due next Wednesday, and the agenda for the meeting is due on Friday. At school, the science project has to be done on Thursday, and teachers have to grade the exams by Monday. The law is the same. For virtually all legal matters, a deadline affects your rights.

In Georgia if you feel that a contract has been breached, you have four years to file suit to enforce the contract, if the contract was oral, and you have six years to sue if the contract was written. (Yes, oral contracts are binding in Georgia, and a large number of contracts are, in fact, oral. Consider the handshake agreement to paint your house, or the deal you have with your CPA for her to prepare your tax return.) If you are injured due to the negligence of another, you generally have two years from the date of the injury to file suit. This is true if you have been the victim of a bad driver at a busy intersection or a negligent doctor during a medical procedure. Suits against negligent lawyers are considered claims for breach of contract, so if you do not have a written fee agreement with your lawyer, then you will have four years to file suit. If you do have a written fee contract with your lawyer, then you probably will have six years to sue for the error. Under current Georgia law, the deadline, referred to as the "statute of limitations," begins to run as soon as the error occurs, even if you are not aware of the error. (This law needs to be

changed in my view, but that is a topic for another day.) Therefore, if you feel that you have a legal claim of any kind, it is important that you consult with a lawyer as soon as possible. Allowing the time to expire on an otherwise valid claim simply adds insult to injury.

With the various deadlines that compel us to take action, there occasionally are circumstances in which a little more time is allowed to file suit. For instance, if a surgical instrument is left inside you during surgery (usually, but not always, a sponge), and you find out about it more than two years following the surgery, you are allowed an additional year to file suit on the claim. If your lawyer committed fraud which kept you from learning that you have a claim against him, you will be allowed additional time to pursue your claim. There is one legal matter, however, for which there is no extension of time. The deadline is clear, and failing to meet the deadline can genuinely harm the ones you love. What is this legal matter? Preparing a Will.

Have you given any thought to how you want your assets handled when you pass away? Oh, you want the state to decide? OK, don't prepare a Will. How about your children? Do you have any? Do you have any interest in determining who will care for them (be their guardian) should something happen to you? No? OK, then don't prepare a Will. Do you have any idea what percentage of your estate will go to your wife (rather than your young children) when you pass away? Don't care? OK, you don't need to speak with an attorney about a Will. Do you care

where you are buried? If you are buried?

You have probably heard it before: You need a Will. You need it for yourself, and you need it for your loved ones. The amount of money you have is just one consideration on a long list of reasons why you should take the time to have a Will prepared. If you have been procrastinating because you think your assets don't justify a Will, it's time to call a lawyer. If you have been procrastinating because...well, because you are good at it, now is a perfect time to take some action. Once you have the Will drafted, you will feel better knowing that your affairs will be handled the way you desire, rather than the way the state dictates.

It is, I concede, a little morbid to discuss how things will be handled if...err, when you die. That is probably one reason why so many of us prefer simply to not deal with it. If you die without a Will, that is referred to as dying intestate. The state decides how most, or all, of your assets will be distributed. The hassle your loved ones must endure, accompanied by the grief they are experiencing after your death, can be too much for some families to bear. Having a Will makes the legal aspects of your death so much easier on your loved ones. If you have children, you probably assume that your spouse will take care of the children. What if the unthinkable happens (we'll think about it for just a moment), and you die in the same crash as your spouse? Then what will happen with your children? Don't you want to be the one to decide who will care for them? How about the funds that you leave for your

children? Do you want the state to decide who oversees those funds and when your children will receive them? It would be far preferable to have that information set out in a Will.

If you have a Will, then you are the one who decides who will act as the executor, overseeing the assets that pass through the estate. If you die without a Will, then someone must be appointed (by the Probate Court) to act as the administrator of the estate. The administrator will take on all the responsibilities of the executor, but without the benefit of the written instructions that you can put into a Will.

When you consult with an attorney and seek advice regarding a Will, you will learn that some assets do not pass through your estate. For instance, life insurance benefits generally do not pass through your estate. They simply are sent to the person you have listed as your beneficiary. In addition, if you have purchased property with another person, you will have purchased it in one of two types of title: (1) Joint Tenants with Right of Survivorship, or (2) Tenants in Common. Joint Tenants with Right of Survivorship means that upon the death of one owner, the deceased owner's interest will automatically pass to the other owner, regardless of the deceased owner's Will. With Tenants in Common ownership, upon the death of one owner, the deceased owner's interest will pass to the deceased owner's estate. If it is not clearly specified, Georgia law assumes you have taken title as Tenants in Common. This becomes important for two reasons. First, if you own a house as Joint Tenants with Right of Survivorship, you cannot leave the house to someone other than your co-owner. Second, suppose you want to divide your

assets equally between three people. If you own the house jointly (with Rights of Survivorship) with one of your beneficiaries, then you cannot divide that asset into thirds, and you will have to give more of your other assets to the beneficiaries who do not own the house with you. The same is true of life insurance. If only one of the three people to whom you want to leave your assets is a beneficiary on your life insurance policy, then you will need to give other assets to the beneficiaries who will not receive life insurance benefits. That is the only way to preserve your intent to divide the estate evenly.

The bottom line is that you need a Will. You need it for your own sense of security that your desires will be honored upon your death. You also need it to protect your loved ones by providing for them and allowing them to avoid the court process that requires a representative to be appointed for the estate. Why have an administrator (who you may not even know) when you can have an executor, who you trust and respect? If you don't have a Will, please get one soon. If you do have a Will, take a few minutes to review it and ensure that it takes care of the ones you love. □



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