



## OLD NORTH STATE TRUST, LLC

### **Failure to Write or Update a Will Creates Crisis for Survivors**

Recent news coverage about the musician Prince's unexpected death has gotten me thinking about the consequences of dying without a will. As his example shows us, failure to plan is a guaranteed recipe for chaos and bad feelings after we're gone.

Whether it's because they can't bear to think about their own mortality, or because they hope to avoid family conflicts, too many people neglect this essential task. Sadly, many of those who fail to write a will have erroneous ideas about what will happen to their estates.

A situation that is almost as bad as having no will at all is failing to update one that has become seriously outdated. Common situations of this kind include divorce and remarriage, or the births of additional children or grandchildren, or the deaths or estrangement of family members, or acquisition or disposal of significant assets.

A couple of years ago, I had to settle an estate for a client who died and left a badly outdated will. It didn't provide in any way for his current marriage, which made things very difficult for his survivors. To make things worse, he had moved to another state just before his death but still had legal residency in North Carolina. That meant his estate was probated here, a serious inconvenience for his survivors.

As too often happens, this man's second wife was at odds with his daughter from his first marriage. Even if the two women had been on good terms before his death, this situation would have been almost guaranteed to pit them against each other. Further complicating matters was that my client had given most of his assets to the daughter just before his death. Fortunately, it was not a taxable estate or that would have caused even more serious problems.

But there were problems enough.

That old will didn't name our firm as executor. That meant that by the time the probate court appointed us to execute the will, many of the estate's assets were gone. The second wife had spent most of the cash. She had also sold the man's prized motorcycle before we could stop her, even though he had made specific provisions for it in the will.

This sort of thing is typical when a responsible executor can't act in a timely manner. When there is no will, or if the will doesn't name an executor, or if an old will names an executor who has since died – in any of these scenarios, the time lag can defeat the person's wishes.

In the case of the motorcycle, we had to pursue the dealership that had bought and then re-sold it to recoup the funds for the estate, but the bike was long gone. Even worse tangles can easily happen if assets include real estate such as the family home, which could be plundered before an executor can get to it.

One of the situations that Prince's estate is facing is that illegitimate offspring, or people claiming to be his children, are coming out of the woodwork.

I had to cope with a similar case recently. I was representing a well-known, well-to-do person who would not have wanted his name smeared in such a way after his death. That might have happened had we not been there, in the beginning, to help him do some smart planning. One crucial piece of his will was language that stated only children born “during wedlock” would be included in the inheritance! Because of that provision, we were able to discreetly ask for documentation regarding marriage licenses and other proof of who was or wasn’t a legitimate heir. This allowed us to quickly put that issue “to bed,” so to speak.

An important word that everyone should understand is “intestate.” That’s legalese for “without a will.” When somebody dies intestate, it’s state law – not anything surviving family members might wish for – that governs how the estate is divided up.

A so-called ordering statute determines who inherits, and in what order. In most states, the surviving spouse is first in line, followed by direct descendants. If there are no surviving children or grandchildren, then other relatives, such as siblings, cousins, nephews and nieces, may get a piece of the estate. North Carolina takes the spouse-first principle a step further. In this state, you cannot disinherit your spouse! People think they can write a spouse out of their will, but that’s not permitted. A will that disinherits a spouse will be challenged and likely overturned.

Another aspect of the state’s intestate law is that if no executor is named, the heirs will have to wait for the court to appoint someone. As in the example I mentioned earlier, that delay can cost the estate precious time during which assets can disappear or be misused.

I have seen too many situations in which, instead of mourning a parent or other loved one, the surviving relatives get into bitter arguments about who should get what. Often those fights deteriorate into conflicts about who loved, or didn’t love, whom, and how much. It’s common to have shouting matches about “fairness” and other highly emotional matters. At worst, these situations can lead to lawsuits and permanent bitterness among relatives. That’s where an independent Executor like Old North State Trust helps to minimize infighting by having a disinterested third party involved. We can do the heavy lifting and keep things in perspective for everyone involved.

It’s amazing how death can oftentimes bring out the worst in people. I urge everybody to consider whether you want this sort of thing to be happening in your family after you’re gone. Will your relatives recall you warmly, or will your funeral become a source of bad memories?

When a family is saying farewell to a departed loved one, this is definitely not the time to be worrying about financial issues. Spare your relatives that pain! Write your will, or make sure it’s current and reflects your wishes as they are today.

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