

## *Do You Really Want to Leave It All to Your Husband?*

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### *An act of betrayal.*

Mrs. Jones never thought her husband would betray her. But he did – five years after she died. How did he do this, long after her death? Several years ago the couple met with their lawyer and wrote their wills to leave everything to each other. They agreed that the second to die would in turn leave everything to their children. Not much later, Mrs. Jones unexpectedly suffered a stroke and was gone within a year. Two years later, Mr. Jones remarried one of his wife's best friends.

Soon things began to change. Mr. Jones' children found that their father became more and more remote. He began to spend holidays exclusively with his wife's family. The children, living out of state, and with busy lives of their own and little extra funds for travel, seldom got back home to see their father. When they did, they stayed in motels rather than with their father because his new wife wasn't comfortable with them around. By the time of his death, Mr. Jones was all but estranged from his children.

Mr. Jones' children were devastated to find that their father had changed his will only five years after their mother's death. His new will left everything to his new wife – not only his share of the family assets, but also the assets his first wife had left him.

What happened? Almost as soon as Mr. Jones remarried, the new Mrs. Jones began to slowly take control of his life. He was about 15 years older than she, and by the time he reached his mid-seventies he became very reliant on her. He dared not displease her. When she insisted that he redo his will, he acquiesced without much thought. Of course, Mr. Jones' new will left everything to his wife.

As a result, Mrs. Jones' children were not only deprived of an inheritance that they badly needed, but they also suffered deep, horrible wounds at their father's betrayal of them and their mother, wounds that will never heal.

While Mr. Jones should certainly have had the freedom to dispose of his property as he saw fit, the first Mrs. Jones certainly had the right to expect her husband to keep his promise to leave her share to the children. But she didn't foresee, or even consider, that her husband would ever break their pact and instead leave her estate to another woman.

### *It happens all the time*

Is this situation unusual? No, it occurs much too frequently. We seldom think far enough ahead when making our wills. However, most of us, if given the opportunity, would rather guaranty that our children or grandchildren will ultimately receive our share of our assets. Unfortunately, most wills aren't structured to provide this guaranty.

### *What you probably want*

If you are the typical married person with children, you probably want your surviving spouse to have full access to your share of the assets if needed, and your children to inherit only if something is left when your spouse also dies. But, at the same time, you don't want your spouse to be able to leave your share of the assets to anyone other than the children. This is especially true of any property you may have inherited.

### *How to get there*

Now, consider the case of Mrs. Jones' friend, Mrs. Wiser, who has observed the disaster the Jones children have suffered. She is determined that her children will be treated better, and consults with an attorney about how to protect them while not leaving her husband out in the cold. After a couple of visits with her attorney, she comes up with a plan to protect her entire family.

Mrs. Wiser will leave only some assets directly to her husband – her share of all of their personal belongings, their cars and boat, and a certain amount of cash. The balance of her assets, including her one-half share of the house, she will leave in trust. The trust, being a part of her will, won't exist until she dies, so she doesn't have to fuss with it while she's alive.

Her husband will receive of all of the income (interest and dividends) of the trust for life, but her children will be the principal or remainder beneficiaries and will receive whatever is left in the trust at their father's death. Her husband will also have the right to dip into the principal if needed for health and living expenses, but only after he spends his own money and other liquid assets.

Mrs. Wiser's husband is named as trustee, so he will be able to invest the trust assets in any reasonable way he desires, and without interference from his children. No bank will be involved.

The will contains a specific directive that the trust may purchase a home for Mr. Wiser's use. That way, if the original house is sold by Mr. Wiser and the trust, he will be able to use trust funds to purchase a replacement home.

At Mr. Wiser's death, the trust will continue for the children. Because Mrs. Wiser's children are mature and responsible, she elects to name them as successor trustees to her husband. Were her children younger, she would have named a bank or a trust company as successor trustee.

Most importantly to Mrs. Wiser, she is preventing her husband from deciding who will inherit her share of their property. He will not be able to give away trust assets while he is alive or in his will at his death because the assets of the trust will not belong to him. Mrs. Wiser's children will one day inherit her share, through the trust, no matter what their father eventually does in his will.

Mr. Wiser is not adverse to this plan. In fact, he strongly agrees with it and writes an identical will that at his death will establish a trust with his wife as income beneficiary and trustee and his children as principal beneficiaries,

along with all of the other provisions mentioned above.

Mr. and Mrs. Wiser also discussed other advantages of trusts with their attorney. Trusts provide strong protection from the beneficiaries' creditors, from the the beneficiaries' own husbands and wives, and sometimes from the beneficiaries themselves. For the most part, creditors cannot seize a beneficiary's interest in a trust. Exceptions are for child support, alimony, personal injury, and federal taxes, but even these exceptions are severely limited if the trust is properly drafted.

Because of the incredible protections afforded by a trust, leaving an inheritance in trust protects the beneficiaries from potential future creditors. Therefore, Mr. and Mrs. Wiser decided that rather than having the trusts terminate when both of them are dead, they will allow the trusts to continue indefinitely. After all, their children will at that time be the trustees, so they will be controlling their own trusts. They will be able to withdraw the trust assets, but no one else will.

The Wisers also fill out change of beneficiary forms for Mr. Wiser's life insurance policies so that the proceeds will go to their respective trusts rather directly to Mrs. Wiser. If this were overlooked, a large portion of Mr. Wiser's estate would pass directly to Mrs. Wiser and avoid the benefits of the trust mentioned above. However, as a beneficiary of the trust, Mrs. Wiser will still benefit from the life insurance.

Several other items are covered by the Wiser's estate plan, things that the Jones did not even consider, such as properly filling out IRA beneficiary forms, a much more complicated task that it appears and that requires careful consideration and drafting.

The Wiser's plan is a good bit more complex than the Jones' plan was, but it is much more effective and protective.

### *Conclusion*

A well done estate plan is by its nature more than a little confusing. It's enough to make you throw up your hands and exclaim, "I just want a

simple will!” But, as I often tell my clients, a simple will is often a simple blunder. Life is complicated, with complex problems not solved by simplistic solutions. If your estate plan is simple, it may not protect your heirs. Or as a client once told me, “A simple will just complicates things.”

So, do you really want to leave it all to your spouse outright, with no strings attached? Maybe so, and that’s fine, and no one has any business telling you otherwise. But if you are concerned about any of the issues raised above, don’t make a simple will. Make an effective will.