

Unintended Consequences of a Do-It-Yourself Estate Plan

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A do-it-yourself estate plan can lead to a number of unintended consequences as demonstrated by a Florida Supreme Court case, Aldrich v. Basile. In this case, Ms. Ann Aldrich wrote her own Will on a pre-printed legal form. Ms. Aldrich specifically listed each item of her property in her Will, including the account numbers for her financial accounts. The Will left each item of property to Ms. Aldrich's sister, Mary Jane Eaton; and, if Ms. Eaton did not survive, then Mr. James Aldrich (her brother) was designated as the alternate beneficiary.

In general, wills and trusts should contain a residuary and other clauses to properly distribute all assets. Ms. Aldrich did not include a residuary clause in her Will because, most likely, it was omitted from the pre-printed form. Ms. Aldrich's Will only contained specific devises that were limited to the property specifically described by her Will. Failing to include a residuary clause had costly consequences for Ms. Aldrich's estate.

Mary Jane Eaton predeceased Ms. Aldrich and named Ms. Aldrich as her beneficiary. Ms. Aldrich created a new account to receive her inheritance from Ms. Eaton and took title to Ms. Eaton's real estate. Ms. Aldrich failed to revise her Will to address the new account or the new real estate inherited from Ms. Eaton.

Following Ms. Aldrich's death, James Aldrich had to litigate with two of Ms. Aldrich's nieces over the assets not listed in Ms. Aldrich's Will. The Florida Supreme Court held that Ms. Aldrich's Will only addressed the property specifically devised to Mr. James Aldrich. Since the Will provided no instruction as to the assets inherited from Ms. Eaton, these assets passed, in part, to Ms. Aldrich's nieces.

One Justice from the Florida Supreme Court commented that the expensive litigation far outweighed any savings resulting from the pre-printed form. Perhaps even worse, Ms. Aldrich's two nieces inherited part of her estate. These nieces were not named anywhere in the Will and Ms. Aldrich probably did not intend that nieces inherit part of her estate. However, this intent could not be inferred by the Court, and the nieces took part of Ms. Aldrich's estate.

Aldrich v. Basile provides a real life example of two basic problems that can result from do-it-yourself estate planning:

1. Unintended heirs; and,

2. Costly

More complex problems can arise from incomplete tax planning or family structure issues, such as divorce, addiction, creditors, and others. These issues often affect even “simple” estate plans and can have profound consequences for an estate.

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