

All in the Planning

Winter 2019

Jarrett &
Luitjens
ESTATE & ELDER LAW

Wills: Not as Powerful as You Think

Without question, the most common misunderstanding about a Will is that it avoids probate. THIS IS FALSE. It's almost the same as believing the bank will accept your Monopoly money.

Imagine this: your uncle passes, and you are named Executor in his Will. Can you



take a copy of that Will to his bank and access his funds? Not unless you are the Hulk using your super strength to open the bank vault at night! The Will on its own carries no legal authority. It is just a piece of pretty paper expressing someone's wishes about the later settlement of his or her affairs—nominating someone to be in charge and describing how to distribute any remaining assets. A person named in a Will as Executor only obtains power to follow those wishes when the Probate Court allows the Will and officially appoints an Executor. At such time, the Court will provide the Executor with a Certificate of Appointment, often with a gold seal or other official marking. And that Certificate is what the Executor can take to the bank (or other financial

institution) to access funds of the deceased.

Probate is a legal procedure intended to assist families with the settlement of a deceased person's estate. The need for probate bears no correlation to whether or not the deceased had a Will. Whether or not probate is required depends upon whether the deceased left assets that can not be accessed by another.

No surviving joint owner on financial account or real estate deed? Probate required. No designated beneficiary on life insurance or retirement account? Probate required. Have a Will, but no surviving owner or beneficiary? Probate required. No difference! Even if you are a superhero.

Don't have a Will? If probate required, then state law will determine your heirs. That's the difference.

Lawyer Joke

Two little girls were having a heated argument about who had the better dad. One girl declared, "My dad's a carpenter and builds buildings." Her friend replied, "Well, my dad's a lawyer and makes loopholes."

New Numbers for 2019

Estate/transfer tax

Vermont estate tax exclusion:

\$2,750,000

Federal estate tax threshold:

\$11,400,000

Federal gift tax exclusion (annual):

\$15,000

Vermont Medicaid

Community Spouse Resource Allowance: \$126,420

Minimum Maintenance Needs Allowance (spousal allocation): \$2,114

Home Equity Limit (singles): \$585,000

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