BRIAN T. TREACY, ESQ.

ELDER LAW & ESTATE PLANNING CENTER

Plan for Tomorrow, Today

Most married couples have what are referred to as "I love you" wills. Generally, they leave the entire estate to each other, and then to both sets of children from a previous marriage. The wills are executed based upon the idea that, should I die first, my spouse has promised to share my estate with my children.

Ideally, Spouse A dies first. Everything goes to Spouse B. When spouse B dies, everything is split equally between the surviving children of both spouses. The reality is, the surviving spouse has no legal obligation to leave your children anything upon his/her death.

Yes, the wills were executed with the intent the estate would go to both sets of children. But, these promises to give the estate to both sets of children is really more morally binding than legal.

When Spouse A passed away and Spouse B inherited the estate, the estate became wholly Spouse B's. Once the estate is wholly Spouse B, he/she is free to dispose of their estate in any manner they choose.

So, when these clients ask me the questions "Can I change my will?" I tell them, "Yes you can." Because legally, YES THEY CAN.

Reason for changing their documents range from "I never see his/her kids", "They stopped calling and visiting", etc.

How do I protect against this scenario? How can I ensure my children receive part of my estate if I should pass first?

Simple. A Trust.

A trust developed with specific language addressing can ensure that upon your death, your estate shall go to your children and you spouse cannot change the distributions.

For more information, contact: ***The Elder Law & Estate Planning Center – 843-757-5294 – 10 Pinckney Colony Rd., Suite 300, Bluffton, SC 29909.***