

For Grandparents: How to Disinherit a Grandchild

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Many clients have investments, and during the Holidays a topic of conversation among the younger generation may include where grandma's investment account will go when grandma dies. Grandpa has already died, and now grandma has it all.

Grandma has one child, daughter Nell, and Nell is married to Snidely Whiplash. Nell and Snidely have four children, and grandma loves her grandchildren dearly.

As the investment advisor, you know that grandma can direct where her investment account will go by putting a beneficiary designation on the account. These designations are often called Transfer on Death, or "TOD" designations. By putting the TOD designation on the account, grandma can have it go straight to the new owner quickly and efficiently. Importantly, TOD designations avoid probate and all the hassles and expense that probate entails.

But what if there is no TOD designation on an account? Where does the account go?

When a Virginia resident dies leaving behind property that has nowhere to go—no Will, no beneficiary designation, no joint ownership—then we must rely on Virginia law to dictate where the property goes.

This body of Virginia law is known as the Law of Intestacy.

Think of it this way: If grandma dies with a Will, then grandma is said to have died Testate. But if grandma has no Will, and no other plan for the asset (TOD beneficiary designation, for example), then grandma is said to have died Intestate, and the property must go through a court process called probate. The probate clerk will turn to the Law of Intestacy to determine where the property goes.

The Law of Intestacy contains a list, or a hierarchy, of who gets grandma's property if she has left no instructions.

Right now, in 2018, when someone dies in Virginia without a Will or other directive, the list looks like this:

First: All to the Surviving Spouse, but only if all surviving children of the deceased are also the children of that spouse. If the deceased left behind any surviving children (or grandchildren, great-grandchildren, etc.) who are not the children of the surviving spouse, then the surviving spouse gets only one-third, and the remaining two-thirds go to the deceased's children.

Second: If there is no Surviving Spouse, then all goes to the deceased's surviving children and their descendants.

Third: If no children or descendants, then all goes to the deceased's parents, or surviving parent.

Fourth: If neither parent is living, then all goes to the deceased's brothers and sisters, and their descendants (the deceased's nieces and nephews).

The Code then stretches out even further in search of a "next of kin," and if there simply are no takers, then it goes to the state.

An interesting point about our current Law of Intestacy is that the spouse is number one on the list. It was not always this way. In fact, given how long Virginia law has been in existence, the spouse has been in the number one position for only a short time. When did the spouse take this number one position? July 1, 1982.

Before July 1, 1982, it was generally the children who took the number one spot. In fact, prior to 1956 the spouse was at the number four level, and in that year jumped to number two.

For most of us, having the spouse in the number one position is what we want for our own property. But when it comes to the property of grandparents, sure, they want their child to enjoy it for as long as the child lives, but when the child dies, they are likely to want their property to pass down to the grandchildren—not across to their child's spouse.

The fact of the matter is that either way—through TOD designations or through the Law of Intestacy—grandma's investment account in our case becomes the property of her daughter, Nell. And what happens to grandma's investment account if Nell dies intestate?

Who is first on the list?

That's right: Nell's husband, Snidely Whiplash.

But wait a minute, cries grandma. I want my account to go to my grandchildren, not to my son-in-law!

Too late. When grandma leaves her account to Nell by TOD designation, or through Intestacy, grandma loses control over that account. It now belongs to Nell. Nell owns it outright. And under

Virginia's Law of Intestacy, all of Nell's property (including the account from grandma) goes to Nell's spouse, not down to the grandchildren.

But what if Snidely remarries?

Who's first on the list?

You mean...?

Yes, when Nell dies, Snidely gets the account. And what does he do? He puts all that money in a joint account with his new wife. And then, when Snidely dies, his new wife ends up with all that money that grandma meant to leave for her four grandchildren. The new wife can do whatever she wants with all that money. She can spend it or leave it to whomever she wants. Will she leave it to any of grandma's grandchildren (new wife's stepchildren)? Don't count on it.

Our current Law of Intestacy does not have the emphasis on the bloodline that it used to, and with the spouse being in the number one position, there is no guarantee that grandma's property will stay in grandma's bloodline.

How does she keep her property in the family?

That, my friend, is why I do a lot of trusts.