

Holiday Harmony (or Hubbub): Disinheriting with Finesse

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Whether it is the result of a discussion about politics, a few too many after-dinner drinks, or a shift in a family relationship, after every major holiday, calls from clients increase requesting a change in their estate plan. Regardless if you wish to reconsider who shall serve as guardian for your minor children in the event of your death or to disinherit a family member, things change. The good news is that an estate plan is fluid, and if drafted properly, removing someone from your estate plan is not as complicated as one might assume.

Where to start?

First things first, you should not make this change to your Last Will and Testament on your own. In New York, defacing a Last Will and Testament, writing notes in the margin, or crossing out someone's name is generally insufficient to change a Will. In the worst-case scenario, markings on a Will, or defacing it, could even revoke the *entire* Last Will and Testament, not just the portion you wish to change.

Can you make a change?

In a word, yes. Wills are revocable and amendable at any time before you die, as long as you have the requisite mental capacity to make this change. In fact, a Will is not an enforceable legal document until your death. And generally speaking, you can leave your assets to anyone you choose, whether they are related or not. Likewise, aside from certain protections for your spouse, you can disinherit almost any family member from your Will. In fact, other than the State of Louisiana, no state even requires that you leave assets to your adult children (minor children *are* entitled to support from your estate). The protections in place that will *not* allow you to disinherit your spouse *entirely* due to public policy reasons will be addressed in a future article.

Similarly, with a change to a named guardian for your minor children, you may remove the named guardian from your Will at any time and replace them with someone you believe is more suited for the job. For single parents, it is important to note that naming someone *other than* the child's surviving parent as guardian of the minor child is generally insufficient unless there are extenuating circumstances that would render the surviving parent an inappropriate guardian for your minor child.

Why make a change?

The most obvious reason people make changes to the beneficiaries of their Will is due to family conflict or estrangement. However, there are many other reasons that one may wish to consider making a change. It may be that your beneficiary was recently diagnosed with an illness and, due to that illness, may need to apply for means-tested government benefits. If that is the case, assets that you may leave to that person may be attached by his creditors, like Medicaid, or worse, the inheritance could disqualify him from a much-needed public benefit. One of your beneficiaries, who may have had a greater financial need

when you created your Will, may no longer be in a dire financial situation and simply may not need the financial support. Alternatively, one of your beneficiaries may have shown themselves to be financially irresponsible with her own assets, and you may wish to reconsider leaving funds to someone who does not have the ability to properly manage those assets or set up a trust instead to direct how those funds can be used. Suppose one of your beneficiaries is going through a protracted divorce proceeding or is in a marriage that is likely to dissolve. In that case, you may want to reconsider leaving assets directly to that loved one, as the inheritance could end up with your beneficiary's former spouse.

In the case of making a change to your minor child's guardian, there are all sorts of reasons to replace a guardian. The named guardian may not be as connected to your family or your child as she once was when the Will was first established. Perhaps the named guardian does not live geographically close to your family any longer, and you wish to consider a more local choice for your child to remain in the event of your death. Similarly, if the guardians you chose were married at the time you signed your Will but are married no longer or have had a significant change to their own lifestyle, they may not be the right choice as guardians of your minor children now. There may be a change in the guardian's religious or political beliefs that are now quite different from your own and could influence how you would otherwise wish your children to be raised. Regardless of the reason for the change of heart, it is important that a change in guardianship be articulated in a properly executed Will; otherwise, such an appointment could be unenforceable, and a court would determine the best guardian for your child.

How to make the change?

It is important for you to contact an estate planning lawyer to make the above changes to ensure that they are effective. In addition, when making a change that could alter your entire estate plan, it is important that you communicate to the attorney drafting the change your reasons why the change is being made. In the event that one of the disinherited beneficiaries challenges your Will upon your death, the more information the lawyer has to support this change, the less likely a challenge by a disgruntled beneficiary would be successful in his challenge.

For practical purposes, it is best practice to mention the related beneficiary who would otherwise inherit specifically in your Will. For example, when disinheriting an adult child or sibling, it is recommended that you include their name and state that "for reasons known to them" or "not for lack of love and affection," they are *not* a beneficiary of the Will. This mention does two things. First, if the disinheritance is *not* for conflict or any other reason, it is a kind gesture to say so to ensure there are no misunderstandings about why you chose to disinherit them. The second reason why a mention of this person is important is so that the disinherited beneficiary cannot make a case to challenge the Will by saying there was a drafting error or they were unintentionally omitted. By the same token, if a person would not be otherwise entitled to inherit from you, in the example of a more distant family member, an in-law, or a friend, there is no reason to mention that they have been excluded from your Will.

In conclusion.

If your Thanksgiving holiday was full of more conflict than stuffing, contact our office, and we can provide you with the proper guidance to make a change. Similarly, if you are concerned that your current Will that already disinherits a family member could be challenged by him, you may wish to consider a trust that is harder for a disinherited family member to challenge. Either way, your estate plan is your own, and you have a right to ensure that those who inherit from you and those who serve as guardians for your minor children are the individuals that *you* choose.