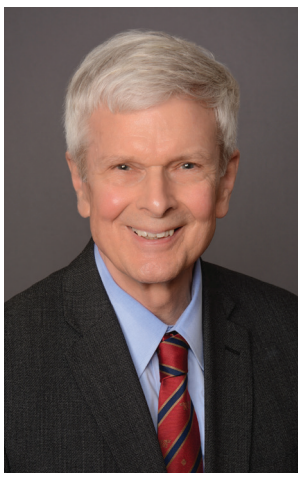

The Top 10 Things
That Should Not Be in Your Will

"... To maintain control and ensure your wishes are followed are the reasons you do estate planning; that's why it's important to ensure those wishes are known properly. The only way to do that is with a fully coordinated estate plan written by an estate planning attorney ..."

By Peter J. Gilbert, Founding Attorney, HighPoint Law Offices, PC

For your "Last Will and Testament" (not to be confused with your medical "Living Will") to work the way you want it to, you must avoid putting things in it that don't belong there. Not only won't they work, but they may also create unnecessary and costly complications. If any of the items listed below are in your Will now, get to an estate planning attorney (not just any lawyer) and take them out of your document.

1. Funeral and burial instructions. Funeral and burial instructions should never be included in your Will, because, by the time your will is read, it will be too late to follow those instructions. Instead, you can leave your wishes with the funeral home you have chosen or in a separate document that your closest loved ones can get to easily when they need to.

2. IRA beneficiaries. Where your IRA goes is set by the beneficiaries you name with the company holding your IRA account. Mixing your Will with your IRA creates some very expensive problems. First, naming your probate estate as your IRA beneficiary guarantees very high taxes on that IRA. Secondly, if your estate is the beneficiary of your IRA, the entire IRA must be distributed to the estate right away. Your beneficiaries will not be happy if you let this happen! Make sure your IRA beneficiaries are named and recorded with the company managing your IRA. It's not enough that you name your spouse; you also need to name the backup beneficiaries if your spouse is not then living.

3. Accounts that are jointly owned or have beneficiaries named. This is how beneficiaries get confused and may even end up at odds with each other. Except for IRAs, which should not be controlled by your Will, who gets financial accounts will be determined either by a beneficiary designation on the account or by the instructions in your Will, **but not both**. Otherwise, there's a "mess" or even a conflict among your beneficiaries.

4. Organ donation. Organ donation must happen very quickly after your you are pronounced dead by the doctors. By the time your will is read, the opportunity for organ donation is long since passed and cannot happen. If you are an organ donor, make sure that your driver's license says so, and you can add this instruction to your medical power of attorney.

5. Life support instructions. Just as with organ donation, your instructions regarding life support should never be in your Will. Your Will is not a legally binding document until you are deceased. Your life support instructions, in addition to any verbal communication with your doctors, should be made to the person who is your medical power of attorney since that person has the authority to authorize or refuse these procedures.

6. Instruction for trust assets. If you have a trust, it will include instructions for what is to be done with those assets after your lifetime. Your Will, and therefore your executor, has no authority or power over your trust. Only the trustee you name has the authority and the responsibility to follow the instructions in your trust. For example, if your home is in a trust, it does not matter what your Will says about who gets that property. Instead, only your trustee will distribute the home as the trust tells him or her to do.

7. Assets owned by a business. Your Will cannot control what happens to a property that's owned by a business unless it's a sole proprietorship. But, if yours is a Partnership, "C" or "S" Corporation, or an LLC, your Will has no bearing on what will happen to property owned in the name of the business.

8. Personal Items. At HighPoint Law, we give our clients a separate document where they can write down who gets items such as jewelry, furniture, and other items in the home. Since the list is likely be modified over time (as items are given away or people change their mind), it's simpler for you to revise the list, rather than having your attorney update your Will every time there's a change.

9. Reasons you are disinheriting someone. Your Will is your final message to your family, and its words can never be taken back. I believe people are more valuable than money, and it's my experience that the stories and conversations remain long after the money has been distributed and spent. There are many samples and guidelines on the internet for communicating with or about difficult relatives. Your estate attorney should be able to counsel you on this difficult decision. Legally, your Will must acknowledge the existence of any estranged people, since otherwise they could argue that you simply forgot to include them.

10. Life Insurance and annuity beneficiaries. What happens to insurance or annuity proceeds is entirely controlled by the beneficiary forms you fill out, regardless of what your Will may say. You can make life insurance payable to your estate, but annuities should go directly to your beneficiaries.

In estate planning, control is a good word. To maintain control and ensure your wishes are followed are the reasons youdo estate planning; that's why it's important to ensure those wishes are known properly. The only way to do that is with a fully coordinated estate plan written by an estate planning attorney.