

MOVING TO VIRGINIA – WILL MY ESTATE PLANNING DOCUMENTS SURVIVE THE TRIP?

If you have recently moved to Virginia, or are planning to do so, you may wonder whether your estate planning documents need to be revised after the move. The answer is usually “yes”. But a more definite answer depends on a review of those documents to determine: (1) whether the documents are still valid, (2) whether the documents will unnecessarily delay or complicate the estate administration process, and (3) whether the documents still accomplish your estate planning objectives.

1. Will my will be valid in Virginia?

Like all states, Virginia has specific requirements for making a valid will. Although the requirements are usually similar, a will that is valid in one state may not always be valid in another. To be safe, your will should be reviewed to be certain it meets the requirements of Virginia law. If your will is invalid for any reason, it will be ignored completely and your assets will pass according to the Virginia laws of intestacy.

2. Will administration of my estate be delayed or complicated?

Many provisions are included in Virginia wills and trust agreements to make the administration process more efficient and less costly. For example, Virginia has a statutory form of “self-proving affidavit” that simplifies the process of admitting a will to probate. The affidavit eliminates the need for a witness to the will to testify at the time of probate as to the genuineness of the testator’s signature and his or her competence. This is especially important if the witnesses are deceased or their current location is unknown. Without this affidavit, at least one of the witnesses to the will must testify in person or by deposition.

There are certain powers and authority typically granted to a Virginia executor by including specific reference to the applicable Virginia statutes in the will. Without this reference the executor may lack the powers needed to properly administer the estate. The alternative is to petition the Circuit Court to grant those powers, which can be an expensive and time consuming process.

Another factor to consider is whether surety is required on the bond of the executor. Surety is an insurance policy purchased to insure the estate against any losses incurred by the executor’s malfeasance. Because the cost of this policy is paid by the estate, testators usually prefer that surety be avoided, if possible. Virginia has strict rules as to when surety can be waived. For example, surety is never waived if a non-Virginia resident serves as sole executor.

While the process of administering an estate in Virginia is not as complicated and expensive as in some other jurisdictions, there are methods available to simplify the process. Simplification may be accomplished by making minor changes to your will, such as selecting a different or additional executor. In other situations the use of living trusts may be appropriate.

3. *Changes to estate planning situation.*

Your move may be an opportune time to review your estate planning documents. We recommend that the overall estate plan be reviewed every three to five years, even if your state of residence has not changed. Changes in family situations (births, deaths, marriage or divorce), financial situations, and tax laws can affect the appropriateness of your current documents.

In summary, you should have your documents reviewed to make sure that they are still valid, will not unnecessarily delay or complicate administration of your estate and, most importantly, still achieve your estate planning objectives.