Purposes and Uses of a Will (GA)

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This practice note describes the purposes and uses of a will in Georgia. It identifies the functions that a will may serve, such as transferring a testator's property and nominating an executor and a guardian for minor children. It also addresses the type of property that may be transferred by will.

For information on the requisites of creating and drafting a will, see Requisites, Instrumentation, and Will Provisions (GA). For further discussion of revoking, reviving, amending, or interpreting a will, see Revocation, Revival, Amendments, and Will Contests (GA).

Purposes and Uses of a Will

The Georgia Code defines a will as "the legal declaration of an individual's testamentary intention regarding that individual's property or other matters. Will includes the will and all codicils to the will." Ga. Code Ann. § 53-1-2. See also 5 Southeast Transaction Guide § 82.03. A person who makes a will is referred to as the testator.

A person who dies with a valid will is said to have died testate, while a person who dies without a will is said to have died intestate. See Ga. Code Ann. § 53-2-1. In Georgia, a decedent's intestate property passes to his or her heirs as prescribed in Ga. Code Ann. § 53-2-1(c). Perhaps the most basic reason for a Georgian to make a will is to ensure that the person's property passes upon death according to the person's true wishes rather than according to Georgia's laws of intestacy.

By making and executing a will, a testator may:

- Transfer certain property on death, either outright or through a trust
- Nominate an executor
- Nominate a guardian and a conservator for the testator's minor children
- Create or exercise a testamentary power of appointment
- Direct the disposition of his or her remains

For basic will forms, see Will for Single Individual (Basic) (GA) and Will for Married Individual (Basic) (GA).

Transfer of Testator's Property

The principal use of a will is to effect the transfer of the testator's property on the testator's death to the beneficiaries selected by the testator to receive the property. In Georgia, a testator may make any disposition of property that is not illegal or inconsistent with Georgia public policy. Be aware that Georgia is one of the only states permitting complete disinheritance of a spouse. Ga. Code Ann. § 53-4-1.

The testator may designate that property be distributed outright to a beneficiary or class of beneficiaries, or the testator may bequeath the property to a beneficiary or beneficiaries in trust. Ga. Code Ann. § 53-1-2(3); Ga. Code Ann. § 53-12-101(a). If the trust provisions governing the testamentary gift are contained in the will, the trust is called a testamentary trust. See Ga. Code Ann. § 53-12-2(11); Ga. Code Ann. § 53-12-2(14); Ga. Code Ann. § 53-12-23. Not

all property, however, is subject to disposition according to a testator's will—only probate property.

Probate and Nonprobate Property

Only probate property is subject to disposition under the terms of a testator's will. Certain assets may pass to persons outside of the testator's will because of how title is held or due to a contractual obligation, making them nonprobate property. For example, a person's interest in property held in joint tenancy with right of survivorship with another person passes by operation of law to the surviving joint tenant and cannot be transferred by the testator's will. See Ga. Code Ann. § 14-5-8 and Ga. Code Ann. § 40-3-34(f). (If the joint owners die simultaneously, though, a fraction of the assets may then pass under each joint owner's will. Ga. Code Ann. § 53-10-4.) Likewise, property held in multiparty accounts, such as joint accounts or pay on death accounts, is generally transferred to the person designated to receive the account on the death of one of the parties. Ga. Code Ann. § 7-1-813; Ga. Code Ann. § 7-1-815. Unless a beneficiary designation names the owner's estate, properly completed beneficiary designations for life insurance, annuities, pension and profit-sharing plans, and individual retirement accounts will transfer the property to the designated beneficiary unaffected by any provisions of the owner's will. See Ga. Code Ann. § 53-12-2(15). Life estates will generally pass outside the will on the death of the life tenant. Property transferred to a trust will not pass by a will unless the trust provides for a testamentary power of appointment.

Testamentary Trusts

A trust created under a will is referred to as a testamentary trust. A testamentary trust is irrevocable upon the testator's death. There is no separate trust agreement for a testamentary trust; rather, the terms of the will govern the trust and are the trust instrument. Ga. Code Ann. § 53-12-2(14).

Because a testamentary trust is created under a will, and a will only takes effect when the testator passes away, a testamentary trust can give flexibility to a testator who directs that a testamentary trust only come into being under certain circumstances. For example, a testator who has minor children when the will is signed might include in the will a standby testamentary trust that would only come into existence if the testator's children are under the age of 25 (or other age at which the testator is comfortable with the idea of the child coming into a large sum of money or substantial asset). Any testamentary gift to that child would be made subject to the testamentary trust provisions. If the child is under age 25 when the testator passes away, the testamentary trust provisions would govern. If, however, the child was 25 or older at the testator's death, the testamentary trust would not come into existence, and the child would receive the testamentary gift outright and free of trust. The testator avoids some extra administrative work and expense during life by not creating an inter vivos trust that is unnecessary under the facts that ultimately transpired.

A testamentary trust can also allow the testator to control the use and ownership of trust property after the testator has passed away, postponing the final distribution of trust property until some later point in time. For example, with a spendthrift testamentary trust provision, the testamentary gifts intended for a spendthrift beneficiary can remain in trust throughout the beneficiary's lifetime, with specific directions as to the circumstances and conditions under which a distribution of income and principal can be made to the beneficiary. As another example, a testamentary trust can be used to provide income and (if necessary) principal to a testator's spouse but provide for the ultimate distribution of the assets to the testator's children. This is potentially useful if the surviving spouse remarries or has children that are not the testator's.

Counsel should be aware that any provisions contained in a testamentary trust might, in some cases, be more appropriate in an inter vivos trust. A testamentary trust offers no privacy, as the will that contains it is filed in probate court when the testator dies. Ga. Code Ann. § 53-5-5. Further, as a practical matter, the beneficiaries of the testamentary trust will have to wait for the will to be proved and an executor to qualify before the trust has any assets. If the testator anticipates that a beneficiary will have an urgent need for financial assistance, a testamentary trust may not be the right answer. For an in-depth discussion of trusts, see Characteristics and Uses of Trusts (GA).

Executors

A will may be used to nominate an executor. Ga. Code Ann. § 53-6-10. An executor is one type of personal representative. Ga. Code Ann. § 53-1-2(12). (Note that the Georgia Code and probate forms often use the term "personal representative.") An executor is a person named or designated in a decedent's will to carry out the provisions of the will and administer the decedent's property. Ga. Code Ann. § 53-1-2(7). Generally, the executor's duty is to settle the decedent's estate as quickly and with as little sacrifice of value as is reasonable under the circumstances. The executor must act in the best interests of everyone who has an interest in the estate and with due regard for the rights of each one. Ga. Code Ann. § 53-7-1(a). There is no special language required in the will to nominate an executor. Ga. Code Ann. § 53-6-10(a).

A nominated executor is a person who was nominated as executor in the will but has not yet qualified with the probate court to serve as such. Ga. Code Ann. § 53-1-2(10). If a will nominates one or more individuals to serve as executor but none of the nominees qualify to serve, an administrator with the will annexed will be appointed by the court or selected by the beneficiaries. Ga. Code Ann. § 53-6-13; Ga. Code Ann. § 53-6-14.

Who to Nominate as Executor

Any natural person 18 years or older and not suffering from a legal disability or an entity authorized by law to act as a fiduciary (such as a bank or trust company) may qualify as an executor. Ga. Code Ann. § 53-6-1. A testator may nominate a person to serve as executor who is not yet 18 years old when the will is signed, with the understanding that the person could not serve until reaching age 18. Ga. Code Ann. § 53-6-10(c). Citizenship and residency are not requirements to serve as an executor in Georgia. Ga. Code Ann. § 53-6-1. Further, unlike some other jurisdictions, Georgia does not bar convicted felons from serving as executors.

At a minimum, a person nominated as executor should be someone who would reasonably be expected to have sufficient time and energy to devote to the affairs of the estate. Business knowledge and experience may be desirable, although these qualities are not absolutely necessary. In the usual case, an executor may look to an attorney or another professional advisor for advice and assistance with business matters. If the estate includes an operating business (or an interest in such a business), though, the testator may want to nominate an executor who is more skilled in such matters and who will be more capable of dealing with issues that might arise in conjunction with such a business.

The executor's key duties include the obligation to identify, marshal, preserve, and inventory the assets of the estate. As such, it may be desirable to select an executor who has at least some familiarity with the character, extent, and location of the testator's property. Additionally, geographic proximity of the executor to the property to be administered will ordinarily be desirable. Although there is no legal bar to the appointment of a nonresident executor in Georgia, it is generally inadvisable to nominate an out-of-state resident unless the out-of-state resident is the only trustworthy member of the testator's family or has some particular qualifications to serve as executor. Furthermore, the executor role may be made more difficult and time-consuming for the out-of-state resident (and, in turn, slower for the other interested parties) simply due to issues of geography.

Before naming a certain individual, a testator should consider the various conflicts or potential conflicts the nominated executor has with the beneficiaries and creditors of the estate. An executor nominated by the testator has the right to qualify to serve in the role unless the nominee is adjudged unfit. Ga. Code Ann. § 53-6-10(b). A probate court has broad discretion to find that there is good cause to remove an executor. See In re Estate of Moriarty, 585 S.E.2d 182 (Ga. Ct. App. 2003). Good cause may be shown even if the executor allowed himself to be placed in a position in which his or her personal interests might conflict with a beneficiary's interest—even if the executor did not actually act against the beneficiary's interest. See Bloodworth v. Bloodworth, 579 S.E.2d 858 (Ga. Ct. App. 2003).

Qualification as Executor

In Georgia, the executor nominee must qualify to administer the estate before exercising any powers. A nominated executor is not qualified until the nominated executor has taken the required oath, posted any required bond, and been issued letters testamentary. Ga. Code Ann. § 53-1-2(7); Ga. Code Ann. § 53-1-2(10); Ga. Code Ann. § 53-1-2(13). A nominated executor may take the required oath outside of Georgia upon commission by the probate court with jurisdiction over the probate proceedings. Ga. Code Ann. § 53-6-16(b).

Even if a person is named in the will as a nominated executor, the person may still opt to decline to accept the role by expressing such decision in writing. Declining to serve as executor at one point in time does not, however, preclude the person from agreeing to serve at a later time to fill a vacancy in the position. Ga. Code Ann. § 53-6-12.

Typically, the nominated executor presents the will and seeks to qualify as executor in the same petition to the probate court. See Ga. Code Ann. § 53-5-17(b) and Ga. Code Ann. § 53-5-21(b). If, however, the nominated executor either cannot or does not choose to seek to qualify or actually does not qualify within 90 days after the date of the probate court's order admitting the will to probate, the next nominated executor in the will may step up and seek to qualify. If the next nominated executor similarly declines the position or does not qualify within 90 days, any nominated executor may seek to qualify. Should there be no additional nominated executor, or if no nominated executor qualifies within a reasonable time after the order admitting the will to probate, an administrator with the will annexed may be named or appointed. Ga. Code Ann. § 53-6-11(a). Again in this case, a nominated executor who fails to qualify for any reason is not precluded from qualifying to serve at a later time. Ga. Code Ann. § 53-6-11(b).

Duties of Executor

The nominated executor's first responsibility is to offer the will for probate. Ga. Code Ann. § 53-5-2.

Once the executor has qualified, it is the executor's obligation and duty, as a fiduciary of the testator's estate, to gather the estate assets, settle claims for or against the estate, prepare any necessary tax returns, and distribute the assets in accordance with the terms of the will. See Ga. Code Ann. § 53-7-2. For example, unless otherwise provided in the will, the executor is authorized to:

- Settle, contest, or compromise claims (Ga. Code Ann. § 53-7-45)
- Make certain investments, in some cases with probate court authorization (Ga. Code Ann. §§ 53-8-1–53-8-3)
- Borrow money and pledge estate property as security, with appropriate probate court authorization (Ga. Code Ann. § 53-7-6(1))
- Enter contracts for labor or services for the estate's benefit, with appropriate probate court authorization (Ga. Code Ann. § 53-7-6(2); Ga. Code Ann. § 53-7-6(4))
- Carry out the duties and responsibilities of the decedent under executed contracts (Ga. Code Ann. § 53-7-6(3))
- Continue the business of the decedent for 12 months after the executor's qualification and, after that, as authorized by the probate court (Ga. Code Ann. § 53-7-6(5))

Oftentimes, the will may grant, or the beneficiaries may authorize the probate court to grant, expanded powers to the executor to perform more tasks without probate court authorization. Ga. Code Ann. § 53-7-1(b); Ga. Code Ann. § 53-12-263(a). For further discussion, see 5 Southeast Transaction Guide § 86.51. For a list of powers, see Ga. Code Ann. § 53-12-261. For an in-depth discussion of probate and estate administration in Georgia, see Governing Law of Probate, Jurisdiction, and Proceedings (GA) and Fiduciary Appointments and Duties in Probate Proceedings (GA).

Attorney as Executor

There is no statute in Georgia prohibiting a drafting attorney from serving as an executor or trustee under that will. Counsel should be aware, however, that they are subject to Georgia Rule of Professional Conduct 1.7 on Conflicts of Interest.

Specifically, a drafting attorney may be named as executor or trustee in a document the attorney drafts as long as (1) the attorney does not consciously influence the client to name the attorney in such position, and (2) the attorney provides the client full disclosure of all of the possible conflicts of interest. The attorney must then either obtain the client's written consent or give the client written notice of the potential conflicts. Formal Advisory Opinion 91-1. Full disclosure of possible conflicts should include:

- Discussion of all persons who were considered or might be selected for the position, including their relative abilities, competence, safety, and integrity, as well as their fee structure, if applicable.
- A description of the representation and service that the attorney would render if named by the client.
- Discussion of the potential of the attorney, as executor or trustee, hiring the attorney's firm to represent the estate or trust and the computation and handling of fees in such situation.
- An explanation of the advisability of the client's seeking independent legal advice on the decision.

Furthermore, if attorney's fees exceed what is allowed by statute, the total legal fees and executor's commission must be reasonable and obtained in procedural accordance with Georgia law, by application to the probate court. Formal Advisory Opinion 91-1; Ga. Code Ann. § 53-6-62(a). Attorneys must avoid so called double-dipping when serving as both executor or trustee and legal counsel to the estate or trust.

Formal Advisory Opinion 91-1 includes a Form Notification and Consent Letter for use by attorneys in this situation. See also Ethical Issues in Estate Planning (GA).

Corporate Executor

Although trust companies usually have professional staff that is experienced in estate administration and trained in such matters as investment and accounting, many trust companies have minimum asset thresholds that must be satisfied before they will agree to act as executor. Thus, before drafting a will nominating a trust company as executor, you should ascertain whether the company has an asset minimum and, if so, whether the estate will meet the minimum. Additionally, a corporate fiduciary is not limited to the same executor's commissions as an individual would receive, but instead has its own schedule of commissions it will charge.

Co-executors

In appropriate cases, the testator may choose to nominate two or more co-executors. Unless the will specifies otherwise, co-executors are required to act unanimously in making decisions and taking actions to administer the estate. Ga. Code Ann. § 53-7-5(a). Attorneys should be cognizant that each co-executor shares in the responsibility for the estate

and, potentially, the liability for the misdeeds of the other in carrying out executor duties. Ga. Code Ann. § 53-7-5(b).

Co-executors may be a tempting choice if the testator wishes to avoid the appearance of favoring one devisee over another; the estate would benefit from the wisdom, skill, and attention of more than one executor; or the estate would benefit from the personal attention and knowledge of an individual executor and the professional expertise and judgment of a corporate executor. Co-executors should be nominated, however, only when the testator is confident that the benefits of nominating more than one executor will clearly outweigh the risks and difficulties inherent in multiple fiduciaries.

The first and most perilous risk of nominating co-executors is that they will not be able to work harmoniously. Disagreements may necessitate frequent and repeated petitions for instructions, adding to the expense of administration and delaying its ultimate completion. Family rivalries, personality conflicts, and conflicting financial interests are all potential sources of disagreement and disharmony among co-executors.

Even in the absence of conflict, the nomination of co-executors may delay the estate's administration. Delay is most likely to occur if the co-executors do not live in close proximity to each other. When there are co-executors, the signatures of all co-executors may be needed on numerous documents. Sending the documents to each co-executor may consume time, adding to the cost of the administration and delaying the ultimate distribution of estate assets.

The testator should understand that it is not necessary to nominate co-executors, even when the testator is convinced that a prospective executor cannot complete the administration of the estate without assistance. Most executors rely on the advice of attorneys, accountants, and other professionals employed to assist and advise them in the administration of the estate. The testator should, however, consider the appointment of one or more successor executors with similar qualifications as the nominated executor in the event the nominated executor is unable or unwilling to serve.

If a testator insists on appointing co-executors, counsel should advise them to consider expressly providing how one co-executor's unavailability, illness, or incapacity should be documented to authorize the second co-executor to act alone. See Ga. Code Ann. § 53-7-5(a)(1). To avoid any question, the testator might also confirm in the will that if one co-executor declines or fails to qualify, then the other co-executor is authorized to serve alone. If the testator would prefer that another co-executor step in, those wishes should likewise be spelled out.

Guardians and Conservators for Minor Children

Roles and Responsibilities of Guardian and Conservator

A testator who has minor children may nominate a guardian and a conservator in the testator's will. Ga. Code Ann. § 29-2-4; Ga. Code Ann. § 29-3-5.

Guardian

A guardian is the person with authority to care for a minor child and exercise the custodial rights that would otherwise belong to the minor's parents. See Ga. Code Ann. § 29-2-21. If the testator's death leaves a minor with no surviving parent, the probate court will issue letters of guardianship to the nominated testamentary guardian upon probate of the testator's will, provided that the nominee is willing to serve and no objection is filed. Ga. Code Ann. § 29-2-4(b). If the testator's death leaves a minor with one surviving parent, even if the testator had sole custody of the minor during the testator's life, the surviving parent becomes the sole natural guardian of the minor. Ga. Code Ann. § 29-2-3(c).

Conservator

A conservator is the person who has the authority to receive, collect, and make decisions about the property belonging to a minor child. Ga. Code Ann. § 29-3-21(a). This authority includes (with court order as required) such responsibilities as making reasonable expenditures for the support, care, education, health, and welfare of the minor; investing or selling the minor's property; and entering contracts on behalf of the minor. See Ga. Code Ann. § 29-3-22. Notice or hearing is not required for the appointment of a testamentary conservator, and the probate court issues letters of conservatorship to the nominee upon probate of the testator's will. Ga. Code Ann. § 29-3-5(b). The testamentary conservator may serve as the conservator only over the property that passed to the minor under the testator's will or may be appointed conservator for other property belonging to the minor. Ga. Code Ann. § 29-3-5(c). Be aware that the role of a testamentary conservator may be limited, though, if the testator devised property to minor children in trust rather than outright under the will.

The guardian and conservator roles may be divided among multiple persons, or one person may be appointed to serve in both roles. See Ga. Code Ann. §§ 29-3-1(d) and 29-2-21(b)

(6)–(7) (suggesting that guardian and conservator are not necessarily the same person). If the conservator is not the same person as the guardian, the conservator is directed to endeavor to cooperate with the minor's guardian in the minor's best interest. Ga. Code Ann. § 29-3-22(e).

Selection of Guardian and Conservator – Considerations

Parents sometimes nominate a single individual to serve as both guardian and conservator. In many cases, the person selected by the parent to provide for the personal care of the child will also be a person who has some experience in handling money and making investments. In such a case, the person nominated as guardian may also be nominated as conservator.

Counsel should make sure the parent is aware, however, that the responsibilities of these two roles are essentially distinct. A person who is physically and emotionally capable of providing for the minor's personal needs may not necessarily have the business skill, experience, or instincts necessary to keep detailed records and make investment decisions. Conversely, a skilled financial manager will not necessarily be able or willing to undertake the day-to-day responsibilities of caring for a minor child.

As a client goes through this decision-making process, you should counsel the client that communication is key. The client should communicate with the individuals who the client wishes to name before finalizing the client's will. A nominee might not be willing to take on the guardian or conservator role for certain reasons or might have concerns that the parent would want to know about. The client may also have certain family members whom the client would not under any circumstances want to serve as a child's guardian or conservator. Those wishes may be better expressed in a separate writing rather than in a will that may eventually be in the public record. What is important, though, is that the client make those wishes known.

Guardian Nominees

Selecting a suitable person to nominate as guardian of a minor child can be a difficult and emotional decision for a parent. A guardian must respect the rights and dignity of the child; provide for the child's support, care, health, and welfare with the child's available resources, and conserve resources for the child's future needs as possible; take reasonable care of the child's personal effects; and keep the probate court involved and apprised as necessary. Ga. Code Ann. § 29-2-21(b).

Although the best interests of the child will be uppermost in the parent's mind, determining how best to serve those interests will not always be easy. The decision can also be complicated by family dynamics. Desirable characteristics of a guardian include:

- Similar age to the parent
- Good health
- Character, habits, and lifestyle that make for a good environment for the child
- Goals, values, and parenting style similar to or shared with the child's family
- Acquaintance with the child and ability to interact with the child on a mutually satisfactory basis
- Longstanding and stable relationship with the child's family

See also Ga. Code Ann. § 29-2-40(a) (listing reasons why a guardian might resign the role). All of these considerations frequently indicate the desirability of nominating a relative who is a member of the same generation as the parent, such as one of the parent's siblings or cousins. However, there is no requirement that a guardian be a relative. Nor is there a requirement that the guardian be a resident of Georgia, though a guardian who maintains a home close to the minor's usual home may be expected to disrupt the minor's life less dramatically than a guardian who lives in another state or country. If a guardian nominee lives out of state, the parent should consider whether the guardian would be expected to move to Georgia or whether the parent approves of the guardian moving the child to the guardian's out-of-state home. The parent might choose to express those wishes in the will or, at minimum, discuss them with the guardian nominee. See Ga. Code Ann. § 29-2-22(a)(1) and Ga. Code Ann. § 29-2-22(b)(1).

There is no requirement that a guardian be married. A person's marital status, however, may be a factor in determining his or her suitability to discharge the duties of a guardian. On one hand, a guardian who is married may be expected to have the assistance of his or her spouse in meeting the minor's needs. On the other hand, having joint guardians always comes with the possibility of disagreements or disputes that may hamper the effective discharge of their duties. If a testator wants to name a married couple to act as joint guardians, the testator should consider specifying what should happen if the couple is no longer married or if either of the two nominees has passed away. If the testator would be comfortable having one spouse serve alone as guardian but not the other, it may be more straightforward to nominate only that spouse as guardian, with the hope that the other spouse remains practically but not legally involved.

Counsel should advise testators to strongly consider nominating two or more individuals whom the testator would

trust to serve as sole guardian—whether those individuals are nominated jointly but authorized to serve alone, or are nominated as alternate or successor guardians, or both. The overall objective is to ensure clarity and continuity of guardianship, which is likely in the best interest of the child. For further discussion of testamentary guardians, see 5 Southeast Transaction Guide § 85.03.

Conservator Nominees

A nominee for conservator should have some of the same characteristics as a nominee for guardian. Because of the ongoing need for interaction with the child's guardian to make sure the child's needs are met and interests are served, a conservator would ideally have a close and trusted relationship with the parent's family. Of particular and key importance for a conservator nominee, though, is an ability to guard the minor's financial well-being as well as purely personal interests. A person who is capable of handling money and property, making prudent investment decisions, being responsive, and keeping detailed and accurate records would generally be a preferred candidate. The conservator will be required to provide to the probate court both an inventory of the child's property and a plan for managing, expending, and distributing the property. Ga. Code Ann. § 29-3-30. Experience managing a specific type of property that the minor might own may also be helpful.

The extent of the property that must be managed may have some bearing on the parent's selection. Although a personal friend or relative might be competent to hold and manage a relatively small conservatorship estate, a person with professional fiduciary experience (or even a trust company) may be better suited to handle a larger estate. Counsel should be aware, however, that no conservator will be required if some other arrangement has been made for the management of the minor's property. If the value of the property devolving to the minor is substantial, a trust will almost always be a more satisfactory arrangement than a conservatorship. If a trust is established to provide professional management for property that the parent wishes to set aside for the minor, a guardian may be nominated to provide for the minor's personal needs and a conservator nominated to manage sums distributed from the trust for the benefit of the minor. For a detailed discussion of trusts, see Characteristics and Uses of Trusts (GA).

As in the case of a guardian, a testator should nominate successor or alternate individuals for the conservator role.

Power of Appointment

In a will, a testator may create a power of appointment in a donee and may also exercise a power of appointment previously granted to the testator and exercisable by the testator's will. A power of appointment is non-fiduciary but founded on trust or confidence. Ga. Code Ann. § 23-2-110. It allows disposition of certain property by the donee of the power in the manner directed by the donor of the power. Hargrove v. Rich, 604 S.E.2d 475, 477 (Ga. 2004).

In creating a power of appointment, the donor should specify the property that is the subject of the power; when and how the donee can exercise the power; and the permissible appointees in whose favor the donee can exercise the power (the donee, the donee's estate, creditors of the donee or donee's estate, certain individuals or classes of individuals). See, e.g., Smith v. Ashford, 782 S.E.2d 251, 253 (Ga. 2016), Phillips v. Moore, 690 S.E.2d 620, 621 (Ga. 2010), Ga. R. Bank & Tr. Co. v. United States, 283 F. Supp. 497, 499 (S.D. Ga. 1967) (discussing construction and interpretation of various powers of appointment).

To validly exercise a power of appointment by will, a donee must follow any instructions contained within the power as to its exercise. This may not require an express reference to the power as long as it is apparent from the entire will that it was intended that the testator exercise that power of appointment. See, e.g., Hargrove v. Rich, 604 S.E.2d 475, 477 (Ga. 2004) and Citizens & S. Nat'l Bank v. Kelly, 154 S.E.2d 584, 585 (Ga. 1967) (analyzing exercise of powers). For further discussion of powers of appointment, see Powers of Appointment and Estate Taxation.

Direct Disposition of Remains

A will may be used to leave directions for the disposition of the testator's body, such as funeral instructions or instructions to bury or cremate the testator's remains. In reality, though, a will might not be read until after those decisions have already been made and acted upon. Georgia law specifies a hierarchy of decision-makers as to the control of the disposition of a deceased person's remains. Ga. Code Ann. § 31-21-7(b). If the decedent has appointed a health-care agent under an advance directive for health care or a durable power of attorney for health care in accordance with Georgia law, the health-care agent is the person authorized to make those decisions unless the decedent has designated another person in the decedent's advance directive. Ga. Code. Ann. § 31-21-7(b)(1); Ga. Code Ann. § 31-32-2(5); Ga. Code Ann. § 31-32-4. The advance directive also gives the person completing it the opportunity to express wishes as to burial or cremation. A person may also enter a preneed contract with a provider of burial or funeral merchandise or services for disposition of the person's body or funeral prearrangements and, through that contract, make those arrangements ahead of time. Ga. Code Ann. § 31-21-7(a).

In the event that the probate court is required to settle a dispute between multiple individuals sharing the right to control the disposition of a decedent's body, the desires of the decedent are but one factor to be weighed. Ga. Code Ann. § 31-21-7(d)(2)(E). For an in-depth discussion of advance directives, see Advance Directives and Health Care Agents (GA). For an advance directive form, see Georgia Advance Directive for Health Care (GA).

Georgia Revised Uniform Anatomical Gift Act

The Georgia Revised Uniform Anatomical Gift Act sets forth methods by which a donor may make an anatomical gift. The statute addresses donation of all or part of the donor's body after the donor's death for the purpose of transplantation, therapy, research, or education. Ga. Code Ann. § 44-5-143(a); Ga. Code Ann. § 44-5-141(3). One method of making an anatomical donation is by will. Ga. Code Ann. § 44-5-143(a)(2). If a testator makes the gift by will, it is effective immediately upon the testator's death without the will first having to be probated—and even if the will is later invalidated. Ga. Code Ann. § 44-5-143(d). A testator who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills under Ga. Code Ann. § 53-4-33, or as provided in subsection (a) of Ga. Code Ann. § 44-5-144. An potential donor may also use an advance directive for health care to make an anatomical gift. For an in-depth discussion of amendment and revocation of a will, see Revocation, Revival, Amendments, and Will Contests (GA). For a detailed discussion of advance directives, see Advance Directives and Health Care Agents (GA).

A testator may use a will to provide for the sale of a heart pacemaker implanted within the testator. Ga. Code Ann. § 53-4-73.

Morgan Wood Bembry, Manager, Wood & Bembry LLC

Morgan Wood Bembry is an attorney at Wood & Bembry LLC, a father-daughter law firm in Lawrenceville, Georgia.

Wills, trusts, and estate planning drew Morgan's attention before her career even began, as the practice could give her the opportunity to use her analytical and writing skills to help people on a very personal level. Now, Morgan serves clients needing assistance with both estate planning and estate administration. She works with clients young and old to develop their first estate plans or interpret and rework wills or trusts that they have had in place for years. Morgan also assists survivors who are navigating the probate process or administering a trust for a loved one, doing what she can to make a difficult time a little bit easier.

Morgan's practice also focuses on advising business owners and entrepreneurs, guiding them through the legal issues that arise in the everyday life of a business. Working with her father, William B. Wood, since early 2013 has enabled her to gain the benefit of his years of experience and build her knowledge of business and transactional law. Intellectual property experience from her time at a boutique IP firm in Atlanta proved to be a valuable addition to the practice, allowing Wood & Bembry to add trademark and copyright protection work to the core business services the firm offers to its clients.

Morgan was selected to the 2016, 2017, 2018, and 2019 Georgia Rising Stars lists. Wood & Bembry LLC was voted a top firm in the Business Law Advisors category of Best of Gwinnett in 2016, 2017, and 2018. Morgan is a member of the Georgia Association for Women Lawyers, serving on its Foundation Board from 2013 to 2019 and as Foundation Board President for 2017-2018.

Born and raised a Bulldog, Morgan received her J.D. from the University of Georgia School of Law, where she graduated *cum laude* in 2011 and served as managing editor of the Georgia Law Review. During law school, Morgan interned with the Athens-Clarke County Probate Court and with the Georgia Governor's Office of Consumer Affairs. Prior to law school, Morgan worked in marketing and communications for a large Atlanta law firm. She earned her A.B.J., *cum laude*, with honors, from the University of Georgia, majoring in public relations.