Spencer Law Group, LLC

Wills, Ways & Wisdom

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FLORIDA ESTATE, PROBATE & GUARDIANSHIP INSIGHTS

Blended Families, Holiday Tables & Who Gets Grandma's Ring

Thanksgiving is Thursday, November 26. Somewhere in Florida, someone is already drawing a seating chart. Your bonus daughter goes next to Aunt Pat. Your second husband sits near your sons from your first marriage, but not *too* near. Everyone has a seat, because you made sure of it.

Here's the hard truth for this season: Florida law draws its own seating chart for your estate, and it was drawn for a much simpler family than most of us have. If you don't write your own plan, some of the people you love most may not have a seat at all.

This month, we're looking at blended families: who inherits, who gets the house, and how to make sure Grandma's ring ends up on the right hand.

1. Florida's seating chart: who inherits in a blended family

Last month we covered Florida's "default will," the plan the law writes for anyone who dies without one. In a blended family, that default works very differently.

- **If either spouse has children from another relationship,** your surviving spouse receives **one-half** of your intestate estate. Your descendants share the other half. *(Fla. Stat. § 732.102(3)–(4))*
- **Stepchildren you never adopted are not your heirs.** Florida's list of heirs follows your descendants, parents, and blood relatives. *(Fla. Stat. § 732.103)* A stepchild inherits from their own parents, not from you, no matter how many years you've been "Mom" or "Pop."
- **Adoption changes everything.** A legally adopted child is treated as your descendant, exactly like a child born to you. *(Fla. Stat. § 732.108(1))*

> A HYPOTHETICAL, NOT A REAL CLIENT
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> Marcus and Renee marry. He has two sons, and she has a daughter Marcus helped raise from age six. If Marcus dies without a will, Renee receives half his estate and his two sons share the other half. The daughter he raised receives nothing from Marcus's estate. That isn't what Marcus would have chosen; it's simply what the statute says.

The fix is not complicated: a will or trust that names the people you consider family.

2. Who gets Grandma's ring? The list that keeps the peace

The fights that break families apart are rarely about money. They're about the ring, the cast-iron skillet, the recliner, Granddad's watch. Florida gives you a simple tool for these things: a **separate written list** of your tangible personal property. *(Fla. Stat. § 732.515)*

The list is flexible, but it only works if you follow the rules:

- **Your will must mention it.** A Florida appeals court refused to honor a separate writing because the will never referred to a written statement or list. *(Adkins v. Woodfin, 525 So. 2d 447 (Fla. 4th DCA 1988))*
- **You must sign it,** and it must describe each item and each person with reasonable certainty. "The ring to the girls" invites an argument. "My diamond engagement ring to my granddaughter, Ava, and my diamond wedding band to my granddaughter, Alexis" settles the matter.
- **You can write or change it after your will is signed,** with no new witnesses. If two lists conflict, the newer one controls.
- **It's for things, not cash.** In one case, a note promising someone money to buy a new Mercedes failed, because a separate writing couldn't carry a cash gift. *(Baldwin v. Estate of Winters, 944 So. 2d 437 (Fla. 4th DCA 2006))* Property used in a trade or business can't go on the list either.

Holiday tip: Asking "Is there anything of mine you'd love to have someday?" during your Thanksgiving gathering doesn't have to be awkward when you are surrounded by your loved ones. You may be surprised by the responses. The ring, although beautiful, might not be as sought after as the skillet, because of all the memories (and meals) it has held.

3. The house, the second marriage, and the paperwork that outranks your will

The homestead. Your Florida home has special protection. If you're survived by a spouse or a minor child, you generally can't leave it to anyone else. *(Fla. Const. art. X, § 4(c); Fla. Stat. § 732.4015)* When the home isn't left in a way the law allows, your spouse typically receives a **life estate** and your descendants receive the **remainder**. Within a strict deadline, your spouse may choose a one-half interest as a tenant in common instead. *(Fla. Stat. § 732.401)*

In a blended family, that can mean your second spouse and your children from a first marriage end up owning the same house together, sometimes for decades. Love doesn't always survive a shared roof-repair bill. Planning ahead lets you choose the arrangement instead.

Your spouse's protected share. Florida generally gives a surviving spouse the right to claim an **elective share** of 30% of the elective estate, even if the will leaves the spouse less, or nothing at all. *(Fla. Stat. §§ 732.201, 732.2065, 732.2075)* Couples can waive these rights in a written agreement signed before two witnesses, with fair financial disclosure if signed after the wedding. *(Fla. Stat. § 732.702)* (More on this in February.)

Beneficiary forms beat your will. Life insurance, retirement accounts, "transfer on death" investment accounts, and "payable on death" bank accounts go to whoever is named on the form, not to whoever is named in your will.

- After a divorce, Florida generally treats a designation of your former spouse as void, much like the gifts to an ex-spouse in your will. *(Fla. Stat. §§ 732.703, 732.507(2))*
- **But don't count on that.** The statute has exceptions, and many employer retirement plans are governed by federal law, which may still pay your ex. The only safe move is a new form.
- Remarried? Make sure your new spouse, your children, and your stepchildren are named the way you intend.

4. November is National Family Caregivers Month: a word for the ones who show up

Every family has one: the daughter who drives Mom to every appointment, the son who handles Dad's pills and bills, the stepchild who quietly became the caregiver. Caring for someone doesn't give you legal authority to act for them. And Florida's default rules don't reward caregivers with a larger share of anything.

If someone in your family carries that load, two things can protect them, and you:

- **Give them authority now, while you can.** A durable power of attorney lets them handle your finances even if you later become incapacitated. *(Fla. Stat. § 709.2104)* A health care surrogate designation lets them make medical decisions. *(Fla. Stat. § 765.202)* A preneed guardian designation names who you want to serve if a court ever has to step in. *(Fla. Stat. § 744.3045)*
- **Say thank you in writing.** If you want a caregiver to receive more, or to receive something specific, your will or trust has to say so. Explaining *why* in your plan can also prevent hurt feelings later.

To every caregiver reading this: we see you. Making sure the paperwork is in place is one of the kindest things your family can do for you.

Your November checklist *(between the turkey and the pie)*

- [ ] Make a list of the people you consider family, then check whether your will or trust names each of them.
- [ ] If you have stepchildren you want to include, make sure your plan names them. Florida won't do it for you.
- [ ] Start (or update) your tangible property list, and confirm that your will refers to it.
- [ ] Pull out every beneficiary form: life insurance, retirement accounts, investment accounts, and bank accounts. Check them against your current family.
- [ ] If you own a Florida home and you've remarried, talk through who should live there and who should own it.
- [ ] Thank your family's caregiver, and give them the documents they need to help.

The bottom line

Your family isn't a default setting. Florida's seating chart can't see the stepdaughter you raised or the caregiver who never missed an appointment. Only you can. This Thanksgiving, set the table *yourself*.

With warmth and respect,

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Coming in December: "Who Gets the Dogs? Pet Trusts & Beneficiary Designations."

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