

## **THE IMPORTANCE OF THE RESIDUARY CLAUSE IN A WILL OR TRUST**

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Suppose you have a Will that devises specific property you own to an individual, but does not include a residuary paragraph directing your personal representative to gift your remaining property to others or entities. What happens to your remaining property not specifically given away to an individual.

Under Florida's probate law, a person's Last Will and Testament will be construed as to the intention of its maker. Therefore, if your Last Will and Testament indicates a desire that certain people are devisees of specific property, the law may interpret that intent to include all the rest of your property to be gifted to the individuals receiving specific property even if you did not want that to happen.

In one particular case, the maker of a Will devised specific items of their property (e.g. jewelry) to an individual person. At the time, the property being specifically devised, it was the maker's only property. However, following the signing of the maker's Will, the maker obtained additional property that was not listed as being bequeathed to anyone. In essence, the maker's Will lacked a residuary clause that gave any and all remaining property not specifically devised to another person or entity. There were only two options available under the law: 1) gift the newly acquired property to the persons who were being devised specific property; or, 2) devise the newly acquired property via Florida's intestate statutes which would by-pass the individuals who were already receiving specific property.

A Court of law elected to pass the property via option 1 (to the persons who were being devised specific property) and not option 2. The reasoning for such decision was that the maker's Will did not specifically state that the estate consisted only of the items listed and there was no showing that the maker's intent was to consider any other persons as devisees of the estate. As a result, the newly acquired property passed to the persons who were also being devised specific property.

The turning point in this situation is found in Florida Statute 732.6005, which states in pertinent part that the intention of a testator as expressed in a Will controls the legal effect of the disposition of a testator's property. The statute goes on to state that a Will is construed to devise all property of a decedent including property acquired after the signing of a Will. The legal effect in this situation was that no other persons were mentioned; therefore, the maker's intent was to devise all of the maker's property to the person who was receiving the specifically identified property – regardless of when the property was acquired.

The message to be learned is to make certain that you have a residuary clause in your Last Will and Testament (or Trust instrument). It is also a wise idea to consider the possibility of where you want your property to go in the event all of your residuary devisees should predecease you. For example, you might consider as a last resort to gift your property to a charity. This is especially true if there is a specific descendant in your family tree that you absolutely do not want any part of your estate to go too.

The alternative to preventing the possibility of an heir within your family tree becoming a beneficiary is to specifically state in your Will that such person is intentionally left out and that nothing shall pass to him or her. By inserting such language will show the Court your exact intention and how it is to be construed under Florida Statute 732.6005.

If you are uncertain as to the distribution of your assets following your death, seek out an attorney and ask the “what if question” concerning where your property will end up. Make sure you discuss any situation involving a descendant that is not to become a beneficiary of your estate. Even more important, pull out your Last Will and Testament or Trust instrument and read it to make sure it distributes your estate the way you intend it. If you are not sure it meets your intended result, then in such event, seek out an attorney and have a frank discussion about your Will or Trust’s resulting descent and distribution of your assets. Do not limit the discussion to only one asset or descendant. Your ultimate goal should be to prevent any surprise results following death.