9 FATAL MISTAKES ABOUT DRAFTING WILLS

Mistake #1 – Simultaneous Duplicate Wills.
Duplicate original wills are a mistake. Execute one will. The basic concept of wills is that you may revoke a will by destroying it with the intent to revoke it. What happens if one or some, but not all, duplicate originals are destroyed? Under Georgia law, if a Will is executed in duplicate originals, all originals must be produced or their non-production explained. If an original is missing without explanation, the Will may be deemed revoked by destruction, or it may not, depending on the outcome of unnecessary litigation.

Mistake #2 - Does not provide at least two successor executors.
A will should always have at least two additional executors who would serve if your first choice were unwilling or unable to serve (e.g., dies, resigns, is or becomes incompetent, or doesn't want to assume fiduciary responsibilities). Naming alternate(s)/successor(s) executor(s) will save the time and expense of finding a successor as well as having the estate managed by a person you select as opposed to one the court or your beneficiaries selects.

Mistake #3 - An inventory of your estate is not undertaken.
The attorney must conduct a very detailed client interview and compile a vast array of data before preparing an estate plan. Information concerning your assets, liabilities, family situation, wishes, and related matters must be gathered. If the attorney does not do this it makes it difficult or impossible to draft an appropriate estate plan. You may not reveal certain important information merely because the attorney did not ask; you may not realize the material's significance.

Mistake #4 – Failure to account for future adoptions or non-adoptions.
You have to determine whether you want to address future adoptions or non-adoptions in your will. You may not wish for adopted children to share in your estate in the same way as your biological children or children born during marriage. This especially important when you make a gift to a class of persons (eg. To all my children).

Mistake #5 – No specific provision regarding non-existing property or failure of a gift
Non-existing property or failure of a gift occurs when the item given in the will is no longer in the estate at time of your death (known as "Ademption"). So if there is no specific provision regarding the item then that beneficiary will takes nothing under the will. Also, the intended beneficiary will normally not receive the equivalent value. Therefore, it's important for specific gifts to contain an express statement as to what's supposed to happen if the item is not in the estate.

Mistake #6 – No specific provision regarding what happens if a beneficiary dies before you
When a gift fails because your beneficiary dies before you do (known as "lapse") and unless there's an anti-lapse statute, the gift will then pass under your will's residuary clause (clause that distributes the remaining part of your estate not already gifted), or, if the lapsed gift was the residuary, via intestacy, as if there was no will. Georgia's anti-lapse statute saves the gift for the beneficiary's descendants. To prevent the result of lapse from being governed by rules that may not match with your intent, each gift should expressly indicate who receives the property in the event of lapse.

Mistake #7 – No good tax appropriation provision.
In certain circumstances were an estate is large enough transfers at death (e.g., gifts under a will, life insurance proceeds, survivorship bank accounts) may cause estate taxes to become due. Apportionment means whether to pay the estate tax from these transfers thereby reducing the amount that your beneficiary will receive or whether to pay the tax from some other asset. This scheme may or may not reflect the your intent or wishes. As a result, you must be careful regarding tax apportionment desires if your estate may be large enough to have estate tax liability.