

Will Information

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Consider these questions and answers to help you decide whether you need a will.

Q: WHAT IS A LAST WILL AND TESTAMENT?

A: A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your minor children after your death. A will is not effective until death. As long as you are living, your will has no effect.

Q: CAN MY LAST WILL AND TESTAMENT BE CHANGED?

A: Yes. Changes to a will are made by drafting a new will and destroying the old one. NEVER MAKE ANY CHANGES TO YOUR WILL without consulting an attorney. Changes on the face of your original may make it invalid.

Q: WHAT IS MY LEGAL RESIDENCE?

A: Your legal residence is the state in which you have your true, fixed, and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, and motor vehicle registration, are some indicators of one's legal residence. If you are a citizen of the United States, you must be a legal resident of some state. You cannot be a citizen at large. If you are a naturalized U.S. citizen, you are considered to be a resident of the state in which you were naturalized.

Q: IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?

A: Yes. Your legal residence affects where your will is probated and the amount of state inheritance or estate tax that may be paid at death.

Q: WHAT IS MY ESTATE?

A: Your estate consists of all of your property and personal belongings you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, automobiles, etc. Although the proceeds of insurance policies may be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for tax purposes, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

Q: TO WHOM SHOULD I LEAVE MY ESTATE?

A: A person who receives property through a will is a "Beneficiary." You may leave all of your property to one beneficiary, or you may divide your estate among several persons. In any event, you should decide on at least two levels of beneficiaries: "Primary beneficiaries"- those who will inherit your property upon your death; and "Secondary beneficiaries"- those who will inherit your property in the event the "Primary beneficiaries" die before you

Q: MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?

A: Almost, but not quite. For example, in most states, a married person cannot completely "disinherit" or exclude a spouse. Generally, you are free to give your property to whomever you desire. However, most states have laws that entitle spouses to at least part of the other spouse's estate. This "statutory share" ranges generally from 1/3 to 1/2 of the other spouse's estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Other provisions of the law may control insurance proceeds and jointly owned property. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance attorney.

Q: SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

A: It is advisable. Usually the surviving spouse is designated as the guardian of any minor children. By so naming the spouse in the will, you can sometimes relieve him or her of any requirement to post bond through a court. You should also name an alternate guardian. This would provide for a guardian for your children in the event that your spouse dies before you or you and your spouse die at the same time. This alternate guardian need not be the same person in both your will and your spouse's will; however, should you and your spouse both pass away at the same time, this may cause a conflict as to who the court will appoint as the guardian. Naming co-guardians is something you should discuss

Q: WHAT IS AN EXECUTOR OR PERSONAL REPRESENTATIVE?

A: An executor (executrix, if female) or personal representative is the person, bank or trust company who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate. By the wording of your will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate. The choice is yours.

Q: WHAT IS AN EXECUTOR OR PERSONAL REPRESENTATIVE EXPECTED TO DO?

A: When choosing a personal representative, you should choose someone who will be able to identify, gather, value, and safeguard your assets. The personal representative will interact with several entities to do such things as publish a "Notice to Creditors" in a local newspapers and serve a "Notice of Administration" to provide information about the probate estate administration and notice of the procedures required to be followed by those having any objection to the administration of the probate estate. He or she will also need to conduct a diligent search to locate "known or reasonably ascertainable" creditors, and notify these creditors of the time by which their claims must be filed. He or she will need to object to improper claims, and defend suits brought on such claims, pay valid claims, and file tax returns and pay any taxes properly due.

The role of a personal representative can be time consuming and tedious. It may be necessary for the personal representative to employ professionals to assist in the administration of the probate estate; such as, attorneys, certified public accountants, appraisers and investment advisors. In choosing a personal representative, you should ask yourself if this person will be able to pay expenses of administering the probate estate, pay statutory amounts to the decedent's surviving spouse or family, distribute probate assets to beneficiaries, and close the probate estate. A personal representative should always engage a qualified attorney and in some states this is required. Individuals named in a will as the personal representatives may decline to serve in this capacity. If this happens, the alternate personal representative named in the will may serve or the court will appoint an appropriate person, bank or trust company. Before appointing someone as your personal representative, you should discuss this responsibility with them; however, you should ultimately choose what is best for your unique family and financial situation.

Q: HOW LONG IS A WILL VALID?

A: A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after you execute your will, such as tax laws, marriage/divorce, birth of children or even a substantial change in the nature or amount of a your estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance attorney.

Q: HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

A: Everyone who owns real or personal property could legitimately have a will regardless of the present value of the estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives, and other factors.

Q: WHAT HAPPENS IF I DON'T MAKE A WILL?

A: The truth is that most, if not all, States have enacted statues that control the distribution of property of residents who die without a valid Will. Nebraska has adopted a version of the Uniform Probate Code (UPC), which has also been adopted by approximately 40 other States. The intestate provisions of the UPC provide that if you die without a Will, your property will be divided as follows:

- If you have living children, your property will be divided equally among your living children (if living, your spouse will receive a share as well);
- If you have a surviving spouse with no children, your spouse will receive all your property;
- If you have no children, your property will be divided equally between your two parents or, if only one parent is living, that parent will receive all your property;
- If you have neither children nor parents living, your property will be divided equally among your living brothers and sisters.

For most people, however, the intestate law does not accurately reflect their desires for the disposition of the property at their death nor does the decedent, under the intestate law, have any say over who will administer their estate or who will act as guardian of any minor children. Under the intestate law, if you, your spouse, and your children are killed in a common disaster, people whom you never imagined could end up being the beneficiaries of your estate. Moreover, if you die without a valid Will, the court of your State will name an individual to distribute your property, pay the debts and taxes, and collect the property owned by you. This court-appointed person is termed an “administrator.” On the other hand, if you make a Will, you can appoint a person of your choosing to take care of these matters. This person is called an “executor” or “personal representative.”

Q: WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A: Joint bank accounts and real property held in the names of both husband and wife usually pass to the survivor by law and not by the terms of the deceased's will. Depending upon the complexity of your estate, this topic may be best explored with an estate attorney to determine the most advantageous way for property to be held between spouses.

Q: IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

A: No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

Q: WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

A: Ask your legal assistance attorney. Be sure that you convey accurately your wishes for the distribution of your property to him or her.

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