

Wills

What Is A Will?

A WILL is the legal instrument that permits a person, the testator, to make decisions on how his/her estate will be managed and distributed after his/her death.

A WILL acts on any property that is not transferred to the trust. The will provides for collection of that property, payment of Probate expenses, and transfer of whatever is left to the trust. In effect, whatever is left in the Probate estate "pours over" into the trust and is then administered according to the terms of the trust.

When Should I Make A Will?

A person should make a will right now because no one knows what tomorrow holds. A person should review his/her estate plan occasionally, especially after certain events, such as marriage, divorce and winning the lottery.

Who Needs A Will?

Since everyone dies possessing property, everyone needs a will. The law decides what happens to property in the estate of a person who dies without a will. The law attempts to distribute the property according to what most

people want, but it doesn't always work that way. The default plan normally distributes property to relatives.

Someone who leaves behind a girlfriend or boyfriend, or even a fiancé, will not be able to provide them with any inheritance unless there is a valid will. There is almost no exception in the law to provide otherwise.

What Are The Requirements For A Will?

The specific requirements depend on law. Commonly, the will must be in writing, signed by the person whose will it is (the "testator") and witnessed by (usually) two persons.

The testator normally must have attained the age of majority, and must be of "sound mind" at the time the will is executed.

The witnesses normally MUST be "uninterested", meaning they're not beneficiaries of the will. Witnesses also must be competent persons.

A will normally doesn't need to be notarized, but a document called a "self-proving affidavit" might be created to provide further legal strength to the will.

Why Must An Estate Go Through Court?

So that the decedent's affairs can be LEGALLY concluded. The Court oversees

the probate. If there is real property, someone will need legal authority to transfer the property to the heirs. If the estate is producing income, taxes will have to be paid. The creditors are to be paid from the estate property.

Can A Will Be Changed?

Yes, if the testator is competent. A new will or a “codicil” can be executed to create a new scheme for disposing of the testator’s property.

The Government can change a will also. This is commonly done when there has been a divorce. Usually a divorce terminates the ex-spouse’s rights under a will, unless a contrary intent is clearly shown. A separation doesn’t terminate a spouse’s rights under a will. The specific impact of divorce on an existing will depends entirely on the law.

Can I Appoint A Guardian For My Children In My Will?

Yes. This is another valuable benefit that a will can provide. However, a Court is not bound by the naming of a guardian in a will. The Court will certainly consider it, and it’s often the only way to make your wishes known after you’ve died.

Can I Dispose Of My Property In Any Way I Wish?

Yes, for the most part. But if you indicated that all your property should be

collected and burned, the law might not give effect to that part of your will.

You won't be able to avoid protections given to others by act of law, either.

This can include your spouse's rights against the estate, community property protections, and special protections for children.

Can More Than One Person Be Named As Personal Representative?

Yes. You may appoint co-representatives, or a secondary representative.

Having more than one representative can create problems during probate, however. Normally they will have the same powers to act, and this can create conflict. The nomination of two or more executors/representatives should be carefully considered.

Appointing co-representatives might be an emotional reaction – not wanting to hurt someone's feelings. However, an emotional reaction is often not the best choice for a legal situation. If you nominate co-representatives, you need to believe that they will be able to cooperate in handling the estate.

How Can A Person Contest A Will?

A person contests a will by filing the relevant documents with the probate Court. The person normally must be "interested" that is, must be an heir

under the will or at law. There are time limits for contesting a will.

You must have grounds to have a chance of successfully contesting a will.

Unhappiness with the proposed distribution of property is not a valid ground.

Valid grounds depend on law. Incapacity, fraud, undue influence and duress are the most common grounds.

Is Joint Tenancy A Substitute For A Will?

A joint tenancy with right of survivorship is a method of owning property with another person. At the death of one owner, the other owner becomes the full owner of the property. The property isn't part of the decedent's estate, and doesn't go into probate.

There are tax implications and simple ownership issues for a joint tenancy.

A joint tenancy is not the equivalent of a will. A will can do a number of other things. A joint tenancy creates a situation where the other joint tenant will get the whole property at the decedent's death. But if you give your brother an interest in a joint tenancy on your home, he could sell his interest or his creditors could go after his interest.

Must The Will Be Read To The Family?

This is a Hollywood myth. The law could require this, but it would be rather

pointless. The representative of the estate normally must provide notice of probate to all interested parties, and they can obtain a copy of the will from the probate Court. A “reading of the will” is used in movies to create drama, like when the decedent disinherits his wife and children and leaves everything to his mistress, which is about impossible to do in real life.