



# HOW TO MAKE A WILL THAT WORKS



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Some estate plans are more effective than others. What many of the best plans have in common, however, is a well-thought-out will designed to work along with other estate planning tools.

This booklet offers general information that may be helpful as you plan for the future distribution of your property to family, friends and charitable interests, especially in light of recent tax law changes that may result in more freedom as you consider how your property will ultimately be used.

Before reading further, you might find it useful to take a few minutes to consider the *Four Ps* of estate planning:

- **People.** Who are the family, friends and charitable interests for whom you would like to provide?
- **Property.** List all your property, in whatever form, along with its cost, today's value and the way it is owned. Include any debt and income associated with various properties.
- **Plans.** Consider how you would like to match your property with the people you have listed.
- **Planners.** List the professional advisors who would assist you in making your plans a reality.

Your will is just one part of an effective estate plan - but a vitally important one. In the pages that follow, you'll find answers to a number of commonly asked questions about making and revising wills.

### **1. Is it true most people don't have Wills?**

Yes. There have been published reports that more than half of those who pass away each year do not have wills. Others may have wills that have not been reviewed in recent years and may be out of date.

### **2. Why don't more people have Wills?**

In some cases, it's because they don't realize how important a will is. Others think they aren't wealthy enough to need one. Some believe that life insurance and retirement plan beneficiary designations or joint ownership arrangements are sufficient. Married persons sometimes believe a spouse automatically inherits everything. And many simply procrastinate.

### **3. What happens when someone doesn't have a valid Will?**

All-purpose state laws then come into play and provide a "state-written will" for those who haven't made their own. Provisions vary from state to state.

### **4. Aren't state laws adequate for most situations?**

No, because they're impersonal and make no exceptions. They may also unnecessarily reduce your estate through payment of certain fees and other expenses that can be minimized or eliminated through a well-planned will.

State laws allow a court to decide who should be appointed as your administrator or named as

guardian of any surviving minor children-all without your input. They cannot make bequests to friends and charitable interests. Only you can make your wishes known through a will, trust or other arrangement.

### **5. How does Bonding work?**

A bond is a form of insurance that many states require to ensure that estate administrators handle the estate honestly. The non-refundable premium is paid from the estate. Bonds can be waived in a will or trust, leaving more for your loved ones or charitable interests.

### **6. Does everyone have an estate?**

Yes, if they own anything at all. The term refers to real estate, cash, all personal property, investments, retirement plan assets, life insurance and other types of assets.

### **7. Doesn't joint ownership make a Will unnecessary?**

No, that's a common misconception. Joint ownership may in some cases create needless state or federal estate taxes and may result in gift taxes being due. It may also deny you complete control over your property during lifetime. Joint ownership alone is a poor substitute for a will but can work well in conjunction with one.

### **8. Should a husband & wife both have Wills?**

Yes. It's important that each have a will, even when the two wills are essentially the same. The wills should complement each other and provide for what happens if one spouse does not survive the other.

### **9. Can a Will help reduce estate taxes?**

Yes. Through a well-planned will, you can make a number of provisions that can reduce state and/or federal estate taxes that may otherwise be owed. You may also be able to decide which heirs will be responsible for the payment of taxes if you do not wish for them to be borne equally.

Remember that federal and state gift and estate tax laws can change over time. Check with your advisors to make certain your plans are designed to help minimize or eliminate state and/or federal estate taxes that may be due.

### **10. What is the unlimited marital deduction?**

A husband or wife may leave to a spouse all property they own and pay no federal estate taxes on the estate of the first to die.

In your will, you can take advantage of the marital deduction and eliminate taxes in this manner. Be sure to talk with your advisors about ways your will and other plans can reduce or eliminate taxes on the estate of the surviving spouse.

### **11. Do I need a Will if my estate is small?**

Yes. The smaller the estate, the more important that it be settled quickly, as delays usually mean increased expenses. Besides, your estate may be larger than you realize. Don't make the mistake of thinking of your property in terms of what it originally cost. In many cases, its value may have increased substantially.

### **12. Can I write my own Will without hiring an attorney?**

You can, but it's generally not advisable. Such wills are sometimes declared invalid by the courts. There is no substitute for the professional expertise of a competent attorney.

### **13. How much does it cost to have an Attorney write my Will?**

That depends on how simple or complicated your plans are. Wills generally cost less than most people expect and undoubtedly less than the emotional and financial cost of not having one. Ask your attorney in advance about the fee. It's a question that is expected and answered routinely.

**14. Can I do anything to reduce Attorney fees?**

Yes. Attorneys charge for their time and knowledge, so the more time you can save them, the less the cost should be.

Take along all the basic information that will be needed. Make the lists described on Page 1. Remember to include your Social Security and Veterans Administration numbers (if applicable) and recent income tax records. Don't forget life insurance, pension and other retirement plan account information. Be prepared to discuss whom you would like appointed to settle your estate and/or serve as guardian of any minor children.

**15. Can I name my spouse as personal representative?**

You can. Or you may choose a close relative, friend or the trust department of a bank or another professional fiduciary. Ask your attorney or other advisors for guidance.

**16. Must I get permission from the personal representative before naming him or her in my Will?**

This is not a legal requirement, but it is wise to do so. Your assets or the terms of your will may affect the qualifications expected of a representative and could influence his or her willingness to serve.

**17. Should my Will direct the compensation my personal representative is to receive for serving?**

Fees are generally based on the size of the estate. The probate court will approve the representative's or administrator's fee, so it's not necessary to specify fees in the will. If the personal representative is your spouse, a close relative, friend or beneficiary, rather than a corporate entity, he or she may choose to waive such compensation.

**18. After agreeing to serve, can a personal representative later refuse?**

Yes. This can occur because of age, health and other factors. That is why it is wise to name an alternate.

**19. What happens if my personal representative dies before me and I have not named an alternate?**

In that case, the court will appoint an alternate administrator who may or may not be someone you would choose. Naming a primary and an alternate representative, preferably persons younger than you, is important. Because of their permanence, a bank trust department or other professional fiduciary may be a wise choice as alternate representative.

## **20. What responsibilities does the personal representative have?**

Among his or her other duties, the personal representative will:

- Obtain a death certificate and provide copies to your insurance company, the Social Security office and others.
- Notify banks where you have accounts or safe deposit boxes.
- Arrange for an appraisal of your property, if required.
- Provide for insurance or otherwise safeguard your property.
- Present your will to the probate court.
- Defend your will, if challenged.
- Locate witnesses to your will, if necessary.
- Collect any rents or other debts due your estate.
- Advertise for any just claims against your estate and pay them in order of priority.
- Provide interim management for business interests, if necessary.
- Inspect and maintain your real estate.
- Complete and file state and federal estate and income tax returns, as required by law, in time to avoid penalties.
- Defend your estate against improper tax assessments.
- Establish and fund any trusts created by your will.
- Distribute your property according to your instructions.

- Prepare final accounting and obtain receipts and releases from heirs, if appropriate.

## **21. Should I include funeral instructions in my Will?**

It is usually better to leave separate instructions and tell your relatives or close friends where to find them.

## **22. Is my Will confidential or can anyone read it?**

A will becomes a public document at death, available to anyone who wishes to see it.

## **23. How much detail should a Will contain regarding the disposition of particular property?**

Enough to make your wishes known and prevent misunderstandings among heirs. It may be helpful to specify your wishes should property that is left to an heir no longer be owned at the time of your death.

## **24. How far should I go in my Will to try to foresee future events?**

Think ahead on behalf of your heirs as much as possible. Try to make bequests appropriate to their future needs and family circumstances while leaving them free to use the inheritance as needed.

## **25. Should a Trust be created in a Will?**

You may be able to reduce or eliminate taxes on both spouses' estates through the use of one or more trusts created in your will. Trusts can also relieve a

surviving spouse of the challenge of managing investments.

There are also special trusts that can enable you to make meaningful charitable gifts after first providing your survivors with income for life or another period of time. Your attorney and other advisors can give you more information about trusts.

**26. Aren't charitable bequests made mainly by the wealthy or by those with no close relatives?**

Not always. Many gifts by will are made by people who first provide for their loved ones and then choose to leave the remainder of their assets to charitable interests that have been an important part of their lives. Even a small portion of a typical estate can amount to a very special gift when received.

**27. How do people usually make charitable bequests?**

After first providing for loved ones, many designate that what remains of their estate be distributed to one or more charitable interests. Others specify a percentage of their estate or name a specific property or a dollar amount to go to one or more charitable interests of their choice.

**28. Is there a limit to how much I can devote to charitable purposes in my Will?**

Some states may have limits. Ask your attorney about local rules.

**29. Should I notify a charitable recipient that I have included it in my Will?**

This can be a good idea. It can affect long-range planning, often in vital ways. Charitable recipients are always grateful to learn of such future gifts and can sometimes assist you by providing information about ways to give more effectively and assure that property will be used as intended.

**30. Is there any danger that my bequest may not be received as planned?**

Using an incorrect or unofficial name in your will for the intended charitable beneficiary could cause this to happen. Many charities have similar names. Be sure to use the correct legal name and address.

**31. How many witnesses does my Will require?**

State laws differ on the required number of witnesses. Your attorney can advise you.

**32. Who can be a witness to a Will?**

A person must be of legal age and mentally competent to be a witness. It is helpful if the witnesses are younger than the person making the will.

**33. Must the witnesses read the Will and know its contents?**

No. They must merely understand that it is your will and that you have signed it in their presence.

**34. Is it legal for a witness to be a beneficiary of the Will?**

Yes, but in some states such a witness may not receive property left to him or her under the terms of the will unless there are enough other witnesses to prove the will is authentic.

**35. Once I have a Will, should I ever have to change it?**

You should periodically review your will because even the best wills can become outdated. Changes may be called for if your marital status, financial status or charitable interests change. Revisions may also be in order if you have more children or grandchildren, if your designated personal representatives or guardians can't serve, or if you acquire property in another state. Updating your will may require nothing more than a simple codicil, or amendment.

**36. Am I required to change my Will if I move to another state?**

Most states will recognize a will drafted in the state where you previously resided, if the will was properly executed in that state. But it is always a good idea to have your will reviewed by an attorney in the state of your new residence.

**37. Once my Will is completed, where should I keep it?**

Sign one copy and keep it in your home, office or bank safe-deposit box, or ask your attorney to keep it. Retain an unsigned copy so you can check periodically to see if it needs updating. Note the location of the signed will on the copy.

In some states, safe-deposit boxes are sealed for a time upon the renter's death. Before storing your will in a safe-deposit box, check to see if it will be readily accessible to your personal representative.

**38. Is there anything else I need to know about Wills?**

A booklet like this can cover only the basics. Each person's circumstances and wishes are different another reason you should consult with an attorney when planning or updating your will.

**Keeping Other Plans Up to Date**

The will is the most relied on as the basis of long-range planning. Certain things such as suggesting a guardian or executor, can normally be accomplished only through the use of a will.

In addition to your will, however, other ways of distributing property can help round out your estate plan and minimize taxes and probate expenses.

The *living trust* is a popular plan. Various types of assets-- including securities or other property-- can be placed in such a trust and managed according to your instructions. When the trust ends (usually at the end of one's lifetime), the assets are managed or distributed as the trust directs, often avoiding the probate process.

The trust provisions usually may be changed, or canceled, at any time during life. A living trust can also be used to appoint someone to manage the trust assets during your lifetime should you be unable to do so.

*Life insurance policies* and *retirement plans* offer the opportunity to accumulate assets and make gifts that may also pass outside of probate, free of estate taxes under certain circumstances.

Through *joint ownership*, property can pass directly to another owner at death, avoiding the possible delays and expense of probate. While joint ownership can be useful, it is normally just one component of an effective estate plan.

*Pay-on-death* and *transfer-on-death provisions* may also be used to transfer bank or brokerage accounts to individuals or charities upon death.

*Lifetime gifts* to loved ones and charitable interests can reduce the size of the probate estate and perhaps save on estate taxes that may otherwise be due. Such gifts may call for a change in your will and other plans.

There are other planning tools that can make it possible for you to make gifts in support of charitable interests while retaining income and enjoying other benefits for life or another period of time.

For more information, please contact your professional advisor(s). We will be pleased to assist you and/or your advisors upon request with the charitable dimension of your plans.

The purpose of this publication is to provide general gift, estate, and financial planning information. It is not intended as legal, accounting, or other professional advice. For assistance in planning charitable gifts with tax and other financial implications, the services of appropriate advisors should be obtained. Consult an attorney for advice if your plans require revision of a will or other legal documents. Tax deductions vary based on applicable federal rates, which can change. Some opportunities may not be available in all states.