What You Need to Know

[About Wills]

For most people, making a will may not seem easy. Perhaps that is why millions continue to avoid doing it. Four U.S. presidents--Ulysses S. Grant, Abraham Lincoln, Andrew Johnson and James Garfield--were married with children and died without a will. Today, 60 percent of United States adults living in households with children do not have a will.

Commentators say that many people avoid making wills because they are afraid to face mortality. Perhaps. But more people would be inclined to make a will if they thought about the process as a way to extend their love, care, generosity and gratitude to the family, friends and charitable causes that are important to them.

Here are some questions and answers that may take the mystery out of will-making and impart the important role a will plays in your estate plan.

What happens if you don't have a will?

If you die without a will, your estate will be divided according to laws in the state in which you reside. The resulting transfer of assets may be very different than what you had wished. While certain family members will likely receive part of your estate, close friends or charitable organizations that you may have wished to remember will not be included.

Do you need an attorney to make your will?

Only you know the special circumstances to allow for in your life or in the lives of family and heirs. An attorney will not know how you want to distribute your estate, whom you want to be executor or what charitable organizations you wish to support. You may need an attorney, however, to draft your will so that it is legally acceptable and accomplishes exactly what you want it to do.

For example, you may want your will to do the following:

1. Name the executor of your estate

2. Pass what you choose to children of a prior marriage

3. Set guidelines for will distributions upon simultaneous accidental death of you and your spouse

4. Give your property to those you choose

5. Set up trusts to save on taxes and provide financial management

6. Name the guardian for minor children

7. Ensure lifetime care for a child with a disability

Experts agree that you need an attorney to draw up your will if you own your own business, if your estate is substantial (a $2 million estate makes tax planning a factor under current law) or if you anticipate a challenge to the will.

Even with a rather simple estate, however, one with assets of less than $2 million, you would be wise to hire a lawyer experienced in drafting wills. Paying a fee to have an attorney guide you through the maze of testamentary legalese is more of an investment than an expense. Tell him or her exactly what you want your will to do. Ask about a living will and a durable power of attorney in case you become incapacitated.

Always remember that you have specific wants and that you are employing an attorney to help you satisfy them.

What are some typical parts of a will?

Before making a will, you may want to look at the following "articles" that may be in a will to determine how you want them to read.

My identification and domicile: The listing of your domicile, your legal place of residence, is very important because property in different states and property in more than one state have different tax consequences.

Revocation of prior wills and codicils: Have you any other wills? This must be your current will, and you must state that this will revokes all other wills and codicils.

Naming an executor: This serious decision guarantees that the executor (or personal representative, in some states)--the person named in your will to manage your estate--will follow your wishes to the letter, even despite family pressure.

Taxes and administration expenses: Are taxes to be paid by the estate or are they to be charged pro rata to the beneficiaries under state statute?

Bond: This is to protect your estate assets. The requirement may be waived if your executor is your spouse; a family member; or a close, reliable friend.

Payment of debts: Your debts live after you and will be charged against your estate before any assets are distributed.

Specific gifts: What gifts have you promised to which loved ones? What items of sentimental value do you want to leave for whom? You must be specific to avoid confusion about who gets what. Leaving your heirs at peace by inhibiting envy or jealousy is also a gift.

Gifts of real estate: If your house is not held in joint tenancy, you can will it to your spouse, children or charitable organizations. Even if your house is held in joint tenancy, you need to provide what will happen to it should you survive the joint tenant.

The residuary estate: This is the article in which you give assets to beneficiaries, including charitable organizations, closest to you. Here you will want to be especially specific. The attorney drafting this article must be certain these are exactly the assets and the amount of assets you want distributed to whom. Upon your death, your will becomes irrevocable, so you will want to read it carefully to make sure it is according to your wishes.

Survivorship: In the event of a joint disaster, this clause will specify whether you will be presumed to have survived your beneficiary.

Your attorney may suggest other articles. By reviewing these articles before creating your will, you will be in a position to draft a document that accomplishes your wishes.

How is a will executed?

A will must be typewritten. (Oral and handwritten wills are acceptable in some states, but for special reasons.) The pages should be numbered and stapled together so nothing is misplaced or lost.

You must sign your will, certain that what you are signing is your will. There must be present at that signing "competent and disinterested" witnesses who understand the process and would be capable of testifying, if necessary, in court. They witness your signature, then they themselves sign--in the same room at the same time.

Any will may be simultaneously executed, attested and made self-proved by your acknowledgment and affidavits of the witnesses. These are completed in the presence of a notary and evidenced by the notary's official seal in the state where your will is executed. This process allows your will to be admitted into probate without the necessity of bringing your witnesses into court.

How do you leave a charitable gift in your will?

You can leave major gifts by will to charitable causes and your estate enjoys the benefits of the "unlimited charitable estate tax deduction." Some individuals plan on leaving gifts to their church, temple, hospital or favorite social service agency, then talk about it with these organizations and their friends, but never get around to properly conveying these gifts in their wills.

We would be happy to assist you with your plans so the people and charitable organizations you care for most are not forgotten.

Can you revoke your will?

Relationships and situations change. You are free to alter your will with a codicil or to change your will entirely. Note that an article in your will is "Revocation of Prior Wills and Codicils." It is a good idea to keep your old will but to write on its pages that it has been revoked and replaced by the new will and the date of the new will. This may be useful in situations where someone wants to challenge a newer will.

Conclusion

When you have finished making your will, you can leave the original documents with your attorney or, for a small fee, with the probate court. You keep a photocopy for yourself. (Many people put that photocopy in a safe-deposit box or some special place at home.) Notify your executor or personal representative how to get a copy of your will.

There may be no better time than now, while the information is fresh in your mind, to plan for your will. We would be glad to answer any questions and assist you in your planning.

Sanctuary Information:

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Doing Business As:	The Wild Animal Sanctuary
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