

What is a Will?

A Will is the most basic of estate planning documents. A Will is a legal document that protects your assets, allows you to name the executor of your estate, allows you to name a guardian for your children and helps minimize the chances of a contest over your estate. If you die without a Will, your estate will be distributed according to a State mandated rigid legal formula and not as you may have wished. Local [State] law governs your Will.

WHAT IS IN A WILL?

Simply put, a Will is a letter from you [the Testator] to the Probate Judge in your county. In a Will, you identify yourself, describe your property and explain to whom you are leaving your real and personal property. You may also designate whom you nominate to care for your minor children. If you are concerned about the distribution of your money and property after your death [and you do not have a Trust], you need to have a Will. Many folks intend to get a Will as soon as they get around to it. "I swear that, as soon as we get into port, I'll see about getting that Will made". – Anonymous passenger aboard the Titanic. Once your Will has been submitted to the Probate Court, it is public record. Anyone can see it, read it and get a copy of it.

WHAT IS PROBATE?

Probate can be simply described as a means of transferring title to property. Obviously, once a person dies, that person is no longer able to transfer title to property titled in their name.

Probate is a procedure for transferring title to the decedent's property to the persons entitled to it. The presentation of your Will to a Probate Judge starts the Probate process. If you die owning real or personal property, your estate will end up in a county Probate Court. Unlike with Trusts, every Will must go through the Probate process. Probate will tie up your property anywhere from 6 months to several years, and will cost approximately 2 – 10 % of your estate value. The Judge will make sure your debts are paid and your property is distributed in accordance with your Will or the laws of the State. In many states, the Probate Court has exclusive jurisdiction over guardianships and conservatorships. The Probate Court may appoint a guardian or conservator of a minor or a guardian or conservator of an adult. A guardian is a fiduciary who makes personal decisions for an incapacitated individual. A conservator is a fiduciary who makes financial decisions for a protected individual. The Probate Court must determine whether a guardianship or conservatorship is legally appropriate and who should serve as the guardian or conservator.

CAN MY WILL BE CONTESTED?

A Will [the letter of instruction to the Probate Judge] may be contested. Acquaintances, distant relatives and others may petition the Court to share in your property. A Will can be found to be invalid for various reasons, including improper execution, [Will not witnessed properly by proper witnesses], Testator [you] not competent, Will made under duress or undue influence, etc. Very few Wills are ever challenged in Court. When they are, it's usually by a close relative who feels somehow cheated out of a share of your property. To get an entire Will invalidated, someone must go to Court and prove that it suffers from a fatal flaw. The signature was forged, you weren't of sound mind when you made the Will, or you were unduly influenced by someone. If

your Will is stricken [rejected] by the Court, your estate may be treated as if you died intestate [without a Will] and all of your assets may be distributed by the Court in accordance with the law of the State where you resided [called intestate succession laws, statutes of descent or rules of descent and distribution]. If there are no living relatives, your assets may revert to the State! This may not be what you wanted to happen.

DO I NEED A LAWYER TO DRAFT MY WILL?

No, but... It is easy to make a serious mistake if you draft your own Will [or fail to execute it properly], and the penalty is that, after you die, the Judge will not be guided by your wishes [i.e. your Will], but will distribute your estate by the rules of the State statute of descent and distribution. Many attorneys charge a very small fee for writing simple Wills. Have an attorney write your Will.

WHAT HAPPENS IF I DIE WITHOUT A WILL?

Deciding not to have a Will is effectively the same as letting your state decide who gets your assets after your death. Rather than leave this important issue unanswered or in dispute, each state has a default system (commonly referred to as intestate succession rules or statutes of descent) in the event one is needed. For some, the result may be the same as they would have chosen in their Will [had they written one]. Others, perhaps most, however, may be surprised how the state decides who gets what and how much. The bad thing about dying intestate is that a state's default rules may not go far enough to meet a deceased's distribution wishes. For example, although a surviving spouse is generally first in line to inherit, the spouse may end up having to share the estate with other relatives of the deceased.

WHAT DOES 'INTESTATE' MEAN?

Intestacy is the condition of having died without a valid Will. If you die owning property and without a Will [intestate], there will still be a Probate procedure that your property must undergo. But, instead of having your own personal instructions to guide the Judge [i.e. your Will]; the Judge will give away your assets in accordance with State law. If you don't have a Will, State law will determine what happens to your eligible property [unless you used some alternative legal method to transfer your property before you died]. Generally, your estate will go to your spouse and children [not just your spouse]. If you have neither, it will go to your other closest relatives [as set out by the law of your State]. Most married men or woman leave, in their Wills, a provision that if they die, they want all of their estate to go to the surviving spouse. Yet, many states do not provide for the intestate's distributions to be that simple and straightforward.

WILL MY SAME-SEX PARTNER INHERIT MY ESTATE?

If you are part of an unmarried same-sex couple, without a Will, the survivor will not inherit anything unless you live in one of the few states that allow registered domestic partners to inherit like spouses: California, Maine, and Vermont. If no relatives can be found to inherit your property, your assets will go [escheat] to the State. The remedy is to have a Will and be very specific in your Will as to who gets what!

WHO DETERMINES WHO WILL CARE FOR MY CHILDREN?

In the absence of a Will, the Probate Court will determine who will care for your young children and their property if the other parent is unavailable or unfit. Make sure you nominate a

guardian in your Will!

MOST FOLKS HAVE WILLS, RIGHT?

Though most people are aware that they need a Will, many Americans, as high as 66% according to Consumer Reports, don't have one. Among the famous people who died without a valid Will are Abraham Lincoln, Andrew Johnson, Ulysses S. Grant, Howard Hughes, Martin Luther King, Jr., James Brown, Nate Dogg, Prince, Michael Jackson, Tupac Shakur and Pablo Picasso.