

WHAT CAN A WILL DO FOR YOU?

A will is a legal document you use to dispose of your property at your death. It may also name people to do important jobs, such as a personal representative or executor of your estate, a trustee if you have established a trust, and guardians for minor children. The maker of the will is called the testator. To be valid, a will must comply with specific legal requirements. If you die without a will, the intestacy law of the state where you were domiciled at death will determine who should receive your property. Your *domicile* is the state where you were a legal resident and is not necessarily the state where you lived when you died. Each state has an “intestacy statute” that will determine how to dispose of your estate if you die without a valid will. While generally, this means that your spouse and child(ren) inherit your property or estate, the proportion of the estate each inherits may not match your wishes. For example, if you die without a will in Arkansas and leave a surviving spouse and children, your children will inherit your estate. Your surviving spouse will only inherit if you are not survived by any children or grandchildren. The portion your children inherit is not available to your spouse for his or her needs. This may not be the disposition that you have in mind.

These same “intestacy statutes” also specify who will be in charge of the estate (called your personal representative or executor) and guide a judge in deciding who will be guardians for your minor children. Little flexibility in these laws exists to provide for special needs or family security – something you can do is you write a will. While not everyone needs to create a will in order to ensure that their wishes are carried out at their death, you should consult with an attorney to determine if a will is needed.

Q: WHO CAN MAKE A WILL

A: Any person 18 years old or older and of sound mind can make a will. These two basic requirements must be met but there are other factors that are important as well. The person should be free of coercion, that is they are making the will because they want to do it not because someone else wants them to, and have an awareness of his or her assets and possessions and family members (regardless of whether the family members are included in the will or not).

Q: CAN ASSETS TO GIVEN TO WHOMEVER I NAME?

A: This is generally true, with two notable exceptions. In most States, the surviving spouse can choose to receive a fixed share of the estate regardless of what the will states. This may not apply if a spouse receives property by other means than the will, such as life insurance proceeds. Also in some States, a child born after the will is signed takes a share of the estate as if no will existed, unless it’s made clear that the testator intended to exclude the child. **BUT SEE DOES A WILL DISPOSE OF ALL MY PROPERTY?**

Q: DOES A WILL DISPOSE OF ALL MY PROPERTY?

A: No. Certain types of assets pass automatically at death according to statute or *beneficiary designations*.

1) Life insurance: Money from a life insurance policy goes to the person named as a beneficiary on the policy.

2) Retirement plans: Money from a retirement plan is paid to the beneficiary you named in the plan. This includes a 401(k) account, thrift savings plan, or an individual retirement arrangement (IRA).

3) Property owned as a joint tenant with right of survivorship: If you own real estate, cars, bank accounts, or other property with someone else as a joint tenant with right of survivorship, the co-owner inherits your share when you die by operation of law.

4) Living trust: Any property that you place in a living trust during your lifetime passes according to the trust.

5) A spouse's half of community property: In a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) real estate and possessions acquired during marriage are owned equally by each spouse. Your will distributes only your half of the community property. It may dispose of all of your separate property, that is, possessions and property you brought into the marriage along with gifts and inheritances you received during marriage.

6) "Transfer on death" or "Pay on death" accounts: Some bank accounts and security accounts may be held with a beneficiary designation such as "transfer on death". Other assets, such as U.S. savings bonds, may be held in a form directing those assets to be "paid on death" to a named beneficiary.

Q: CAN I LEAVE PROPERTY TO MINOR CHILDREN IN MY WILL?

A: Yes, minor children (children under 18 years or age) can inherit property. However, depending on the type of personal property, an adult must manage it until the child becomes an adult. Your will can name someone to manage the property for the minor, thus avoiding the need for a court-appointment guardianship. You can name either a *custodian*, *property guardian*, or *trustee* depending on your wishes regarding distribution.

Q: CAN I CHANGE MY WILL?

A: Yes. Frequently, a will is changed because the person has changed his mind about how to divide personal property, who he wants as his personal representative, trustee, or guardian, or because a beneficiary has been born or has died. As a general rule, a will has to be signed and witnessed before it is legally effective. You may use a codicil to make simple changes. A codicil is a legal document that is added to your will and it must be prepared with the same formalities as your will, so do not cross out words, or write on your original will as this may invalidate it.

Q: WHEN SHOULD I REVIEW OR CHANGE MY WILL?

A: You should think about changing your will when:

- 1) you get married or divorced
- 2) there is a birth or death in your family that affects your plan in your will
- 3) you have a large increase or decrease in the value of your property
- 4) the person you name as executor, guardian, or trustee dies or becomes unavailable to serve
- 5) estate tax law changes
- 6) You change your state of legal residence
- 7) you decide to change how you want your property distributed.

Q: WHAT HAPPENS TO MY WILL IF I GET DIVORCED? IF I GET MARRIED?

A: Under some State laws, if you get divorced after you've written a will the spouse named in the will is automatically eliminated as a beneficiary under the will when the divorce is final. Your ex-spouse may still inherit other assets by operation of law or statute. If you marry after you've written a will your spouse receives the same share he or she would have received without a will unless the will makes clear that the omission was intentional or if the spouse was provided for outside the will. An intentional omission doesn't change the rights of the spouse to take a fixed share unless such rights have been relinquished in a marital agreement. You should discuss a change in your marital situation with a legal assistance attorney to evaluate whether you need to change or prepare a will.

Q: HOW LONG IS A WILL VALID?

A: Until you revoke it by destroying it or you prepare and execute a new will.

Q: WHO SHOULD KNOW ABOUT MY WILL?

A: Your personal representative (the person you named in your will to administer your estate), and your spouse or other responsible close friends and relatives. You should keep your will in a safe place, such as a locked fireproof box at your residence. If you use a bank safe deposit box, check to make sure the bank will not seal the box or limit access to it upon your death.

Q: WHAT ELSE DOES A WILL DO BESIDES DISTRIBUTE PROPERTY?

A: Through a will, you can nominate who will be the *personal representative* (administrator, executor) of your estate. You can set up a trust for long term management of assets and for the protection and security of your surviving family members and nominate a *trustee*. You can nominate a *guardian* for your minor children, although there are some restrictions on this right. You can minimize or eliminate *federal and state estate taxes*. A well-drafted will can often reduce the time and expense of administering an estate.

Q: CAN I SAVE TAXES BY USING A WILL?

A: This depends on the size of the estate and other factors. A will has the potential to provide tax savings when properly prepared. A will can also reduce tax liability in future generations, if not in the present generation. It is a common misunderstanding that "avoiding probate" saves taxes. *Probate* and taxes are separate matters.

Q: CAN I WRITE MY OWN WILL?

A: Most States generally recognize wills that are handwritten and signed by the testator; these are known as holographic wills. You may also be tempted to use a fill in the blank form purchased from a bookstore or on-line software to draft your will. These forms are often out of date and may not conform to the laws of your state. While you may save money now, your beneficiaries may pay for it at your death. The drafting of a will requires special skills and it would be prudent to have this done by an attorney. If you are entitled to military legal assistance, you can consult with an attorney and have a will drafted for you at a military legal assistance office free of charge.