

Planning Your Will

How to Make It More Personal and Effective



Your will is a unique document! During your life it lies “dormant.” You can change or revoke it and it has no effect on your financial, business or social situations. But at death, your will becomes tremendously important. It will be submitted to a court. When the court accepts your will as valid, its terms will control the disposition of assets you have accumulated through a lifetime of effort.

Certainly, your will can have a profound effect on the financial well-being of family members, friends and institutions. In all events, it will be a permanent reflection of your personal life values and your love and concern for family, friends and community.

A will is one of the most important documents you will execute during your life.

Key Elements

Whether your will is simple or complex, it is — first and foremost — a legal document. To be effective it must meet the requirements of state law. Even a small mistake in the drafting, execution, or witnessing of your will can make it completely invalid and ineffective.

Secondly, your will can — and should — be much more than a cold, sterile legal document. A will can be a final message reflecting your personal life values, a way of leaving a lasting legacy by which others may remember you.

Perhaps of greatest importance, your will should be practical. Within the parameters of the available assets, it should accomplish your objectives, meet the needs of your beneficiaries and permit an efficient and economical settlement of your estate.



Legal Requirements

Although every state has different rules for the execution of a will — and there seem to be exceptions to every general rule — the typical requirements of a valid will are:

The will should be in writing and signed by the testator — the person executing the will. (We will use this term throughout the booklet, even though the correct legal term for a woman who makes a will is testatrix.)

- The testator must be mentally competent at the time the will is executed.
- The testator must sign the will in the presence of two or three disinterested witnesses and must affirmatively state to these persons

that the document is his or her last will and testament.

- Each witness must sign his or her name (usually in the presence of each other and the testator), affirm that the testator did sign the document and acknowledge it as his or her last will and testament.

Commonly Asked Questions

Although you should always rely on your attorney to be sure your will is validly executed, you still may have questions that lurk in your mind. Here are some of the more common ones asked of our staff:

Do you need to change your will when you move to a different state? Technically, a will must meet all the requirements of the state in which the testator resides at the time of his or her death. And if the will disposes of real property, it also must be executed according to the laws of the state in which the property is located. However, some states may admit a will to probate if it meets the requirements of the laws of the state in which the testator resided at the time the will was executed. It is definitely a good idea to check with a local attorney to be sure your estate plan remains intact.

Who should you select as witnesses to your will? Ideally, a person witnessing a will should not have an interest in the will as a beneficiary, trustee or executor and should not be related to the testator either by blood or by marriage. Certainly, a witness should be a person of good character and truthfulness who is likely to outlive the testator and remain in the state.

Can you use a fill-in-the-blanks type of will to avoid attorney costs? It is wise to rely on an attorney for the drafting and execution of your will.

Revoking or Amending

Your will can be changed easily and inexpensively by executing a “codicil” — a separate document that is executed with the same formalities of a will. In most cases, a codicil is used to make minor modifications to an existing will. The old will remains intact and is simply amended by the codicil.

If you need to make major changes you'll probably want to execute a completely new will. Usually, a new will automatically revokes all previously executed wills, but it is prudent to provide explicitly in your will that all former wills are revoked.

The best way to revoke a will is by executing a new will. However, a will can be revoked in most states by burning, tearing or obliterating the document or by simply writing "canceled" on the pages of the existing document. Of course, the acts must be done with the intention of revoking the will. If a will is revoked by a physical act and a new will is not executed, the estate will be distributed under the intestacy laws of the state in which the decedent resided at the time of death.

A will also can be revoked by operation of law. In many states, a divorce will revoke the benefits provided for the divorced spouse, but may not revoke provisions made for other beneficiaries. In some states, a will is wholly or partially revoked by the marriage of the testator, or the birth of a child to the testator, after the execution of his or her will.

Restrictions on Asset Disposition

Although you generally have freedom to dispose of assets to beneficiaries of your own choosing, state laws do impose some restrictions. The best example is the rule that a married person cannot disinherit his or her spouse. If a will makes no provision for the testator's spouse (or makes inadequate provision), the spouse generally can elect to take a statutory share of the estate, notwithstanding the terms of the will. Typically, a surviving spouse can claim one-third or one-half of the value of the estate.

What about children? People often ask whether each child must receive a certain portion of the estate. As a general rule, children do not have an absolute right to receive any part of the estate under a will.

Generally speaking, we are free to leave our estates to persons or institutions of our own choosing.

Practical Considerations

Let's turn now to the practical side of a will. This is an area where the person making the will, rather than the attorney, has primary responsibility. Take a look first at the various forms of bequests that are available to you.



Most Popular Forms of Bequests

Chances are good that your present will leaves specific sums of money to one or more designated beneficiaries and then directs that all the rest of your estate be divided among other designated beneficiaries. Here are the most practical forms of bequests.

Percentage of Value: Many attorneys recommend "percentage-of-estate-value" bequests rather than monetary bequests. "Percentage-of-estate value" bequests allow all beneficiaries to share in increases or decreases in the value of the estate after the will is executed.

Contingent Bequests: What will happen if a beneficiary named in your will dies before you? Your bequest may go to an unintended relative or "lapse" and pass to your residual estate. Either way, your objectives may be frustrated. The best approach is to name contingent beneficiaries to take a bequest if the primary beneficiary predeceases you.

Specific Bequests: In appropriate cases, your will can bequeath specific real or personal property to a beneficiary. Keep in mind, however, that if the property is not in your estate at

the time of your death, the bequest may become void and the beneficiary will not receive any part of your estate.

Residuary Bequests: It is important to note that the specific bequests provided for in your will are paid and satisfied first. Then, whatever is left of your estate after all specific bequests, taxes and estate costs have been paid can be bequeathed to beneficiaries in a residuary bequest.



Selecting the Executor of Your Estate

Many people name their spouse or a child as the executor of their estate. Unless the estate is large or complex, this is generally a good decision. (In actual practice, much of the work is done by the attorney.) However, depending on the nature of your estate, there may be good reason to nominate a friend as your executor, or to name a bank or trust company to settle your estate.

In choosing an executor, keep in mind that settling an estate can be a complex and demanding task. Assets must be collected and preserved, claims must be settled, debts collected and tax returns filed. The will must be probated, and court proceedings are essential. In most cases, all this is accomplished in one or two years, an accounting is filed, the estate is distributed to your designated beneficiaries and the executor is discharged.

It is important to make sure your executor has the power and authority needed to settle your estate. This can be a technical area of will planning, and you should rely on your attorney to provide the appropriate powers and authority for your executor.

The Art of Planning an Effective Will

There are five basic steps that generally should be taken in making a new will or reviewing an existing will.

First: Make a detailed inventory of your estate, a comprehensive listing of assets and liabilities, including personal effects. Write down the income each asset produces and other characteristics of each asset.

Second: Make a list of your objectives in terms of what you want your estate plan to accomplish rather than how much each beneficiary is to receive. For example, you may want to provide practical financial security for your spouse, a fund to protect a child against a temporary financial misfortune or a fund to assure an education for a grandchild.

We hope that one of your objectives will be to provide a lasting statement of support for one or more important charitable institutions such as ours. In most cases, there will be many ways to provide this support and still accomplish your other estate objectives.

Third: Seek the advice of an attorney as to how your estate can be arranged to accomplish your objectives. Trusts, bequests, lifetime gifts and other arrangements may be utilized. Ask questions. Be sure you understand all the techniques for disposing of your estate in an effective manner.

Fourth: Make your own decisions. It is your estate and you have a right to dispose of it in any manner you desire.

Fifth: Communicate your decisions to your attorney and rely on the attorney to draft a will to accomplish your objectives.

A Final Word

In years past, wills were extremely personal — often emphasizing the personal philosophy of the testator and explaining his or her motive for making each and every bequest.

Today, the opposite seems to be true. Many wills are “boilerplate” documents that are largely impersonal. Certainly, there’s nothing wrong with an impersonal will. On the other hand, there’s nothing wrong with a will that is a warm and solemn message to family and friends.

If you feel that you have something important to say to your children, for example, it makes sense to write an “ethical will”: a document that outlines the values important to you that you would like your family and loved ones to appreciate. Note that an ethical will is not a legal document and is not intended to be a way to distribute your property.

Many people demonstrate their love and concern for family members by making specific bequests of personal effects. Bequeathing a piece of jewelry to a daughter, a piece of furniture or art to a son or a library collection to an old friend can add greatly to the personal nature of your will.

You also may want to include a bequest to one or more charitable organizations that have added meaning to your life. It’s a way of “giving back” and continuing to help make a difference in the lives of others. We can help you plan your bequest to provide the greatest personal satisfaction and tax and financial rewards.

