

ESTATE PLANNING - WILLS

Wills

A will is an instrument by which a person provides for the disposition of his property after his death. It tells people what to do with your property and how to handle your affairs when they can't ask you questions. It is like a letter addressed to a judge instructing him or her on what to do with your estate. It can avoid disputes.

The disposition can be in any way the maker wishes, with a few exceptions: (a) surviving spouse has certain statutory rights to take a portion of an estate regardless of a will; and (b) children born after a will is signed have certain rights to inheritance unless it can be shown that the maker intended to disinherit them.

Some of the advantages of using a will in your estate planning are:

- The relatively low cost in preparing a will versus other planning tools.
- It places little or no burden on you or your assets during your lifetime.
- During your lifetime, nothing can or has to happen with your will.
- A will appoints a guardian for your minor children.
- Creditors can be identified and those that do not file claims can have their obligations discharged.
- So long as your affairs are in order and the will is properly prepared, it will be followed exactly as you wish.

Some of the disadvantages of using a will in your estate planning are:

- A will requires probate and the administrative process can be more expensive.
- There can be substantial delays between the time of death and the ultimate distribution of the estate to the heirs.
- Your estate and affairs are public record.

A will appoints someone to handle the affairs of the maker (a personal representative or executor), can establish a trust (called a testamentary trust since it is a part of the last will and testament) for the management and protection of assets and to save on estate taxes (more to follow).

A will can also appoint a guardian for minor children or incapacitated beneficiary to care for them if both you and your spouse are gone. You can name a single guardian, or you may name two guardians — one person to be responsible for the physical care and welfare of your children, and another person to manage the children's share of your estate.

A will can be changed or revoked at any time before the maker's death as long as he is competent. An amendment to a will is called a codicil. A will can address special situations such

as the care and support of elderly parents or a disabled relative; children that are spendthrifts or have entered into an unwise marriage that calls for special provisions or protection; children of prior marriages; or special disposition of heirlooms or other particular assets.

A will can also be “supplemented” in some states (including Oklahoma) with separate hand written instructions to an executor regarding the disposition of tangible property (such as household items, jewelry, collections, automobiles, etc.) which may be changed from time to time without the formalities of a will.

Certain assets will usually pass outside of a will - but careful planning should consider this when preparing a will. For example:

- Life insurance passes through a beneficiary designation and unless the person’s estate is named as beneficiary, the money paid by the insurance company will not be governed by the will provisions.
- Similarly, retirement plans and IRA’s are governed by beneficiary designations and pass outside the provisions of the will.
- Property held in joint tenancy also passes outside the provisions of a will. See below for some issues which should be considered in using joint tenancy as a part of your plan.

A will should be made while the maker is in good health and free from emotional stress. A will that is hastily planned and drafted under pressure seldom does credit to either the maker or the draftsman. The “deathbed” will is often the subject of long, expensive, and sometimes bitter litigation.

Under certain conditions, estate taxes can be saved with a carefully drafted will.

A will should be written and witnessed in a special manner provided by law. The drafting of a will requires learning, skill and experience obtained only by study, training and practice. Only a practicing lawyer can perform this service.

A will accomplishes different things for different ages and needs. Younger couples should use a will to pass all their property to the surviving spouse where there are no children or to provide for guardians where there are children. Older couples might use a will to dispose of assets with the minimum tax consequence to shelter property they have accumulated throughout their lives.

Wills should be reviewed periodically every 2 to 3 years and when certain major “life” events occur such as marriage, divorce, new children or grandchildren, loss of a family member, gain or loss of assets, changes in economic or personal conditions.

An old will can be almost as bad as no will at all. Each new year brings changes that affect the lives of your family and the nature and value of your property. A birth, death, marriage or divorce can make a big difference in your desires. An inheritance, new business or sale of an important asset can also impact your estate plan. Changes in tax laws occur almost annually which can seriously impact your estate plan.

A self-written or “holographic” will may or may not work as a proper estate plan. Oklahoma law on what is a valid Holographic or handwritten will is very specific and if the document in question does not meet the exact requirements, then it is invalid. Even if the will is determined to

be valid, ambiguous or unclear language can create fights between family members as to your intent and unnecessary litigation and costs can result. Many will contests result from holographic wills. Handwritten changes to a previous will prepared by a lawyer may void the will. What may be no more than a few hundred dollars that might be saved in doing your own will or using a mail order kit instead of a knowledgeable lawyer, may cost your estate thousands of dollars later and may not accomplish your intentions.

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