

Last Will and Testament

Why You Need One

Wills are the primary documents for transferring wealth upon death. If you die without one, state law controls the disposition of your property. In addition, without a will, settling most estates can be more troublesome - and more costly - for beneficiaries.

Parts of a Will

Here are the basic elements generally included in a will:

- Your name and place of residence
- A brief description of your assets
- Names of spouse, children and other beneficiaries, such as charities or friends
- Alternate beneficiaries, in the event a beneficiary dies before you do
- Specific gifts, such as an auto or residence
- Establishment of trusts, if desired
- Cancellation of debts owed to you, if desired
- Name of an executor to manage the estate
- Name of a guardian for minor children
- Name of an alternative guardian, in the event your first choice is unable or unwilling to act
- Your signature
- Witnesses' signatures

Naming a Guardian

If you have minor children, you should name a guardian for them in your will. The guardian is the person you want to take responsibility for raising and caring for your children.

If you're married, your spouse is the natural guardian for the children of your marriage. If you're divorced and your former spouse is still living, he or she will usually obtain full custody of your mutual children, unless he or she has been found unfit and had parental rights terminated. Even so, your will should name an alternate guardian who will serve if your spouse or ex-spouse dies at the same time you do, or shortly thereafter.

The person you choose to serve as guardian may also be the person you want to serve as trustee for your children's support trust. By giving the same person control over your children's physical custody and management responsibility for their property, you can eliminate the possibility of a conflict in the decisions made about your children's education, health and well-being.

On the other hand, if you are concerned about the way an ex-spouse might handle the property and money you leave for your children, it may be best to name someone else to serve as trustee. In this way, you protect the value of your estate and help ensure that it goes to the children and not into the pocket of your ex-spouse. While your children could challenge a parent's mishandling of the trust, it may not be worthwhile for them to do so if the money's gone and there are no other assets from which they can collect any losses.

Whomever you choose to serve as guardian will be subject to approval by the court. Generally, a person will be qualified to serve as guardian if he or she is a legal adult and has the ability and willingness to care for your children.

Most people choose close friends or family members who already have a relationship with the children to serve as guardians. Some people name the children's grandparents to serve as guardian, but if you are considering doing so, remember that your children will need care for years to come; if the grandparents are already fairly old, they may not want to take on the responsibility of raising their grandchildren during the remaining years of their lives.

If your children are old enough to understand the concept, you may want to consider their wishes as well in naming a guardian. In any case, you'll want to obtain the advance permission of anyone you want to name as guardian.

Naming a Personal Representative or Executor

Your personal representative is the individual you name in your Will to represent you after your death. He or she has several major responsibilities, including administering the estate and distributing assets to beneficiaries; making certain tax decisions; paying debts/expenses of your estate; ensuring all life insurance and retirement plan benefits are received; and filing necessary tax returns and paying the appropriate federal and state taxes.

Organizing Your Objectives

The Zaremba Center for Estate Planning & Elder Law offers all potential clients a complimentary planning meeting. When you set this appointment we send you a "Confidential Information Sheet" to assist you in what you'll need to start this process: The homework will outline your objectives, inventory your assets, estimate your outstanding debts and prepare a list of family members and other beneficiaries. Use this information to carefully consider how you want to distribute your assets. Then, during your initial consultation, in a confidential setting you will be asked lots of questions: Is it important to pass my property to my heirs in the most tax-efficient manner? Do I need to establish a trust to provide for my spouse or other beneficiaries? How much money will my grandchild need for college? Do I need to provide for a child who has a disability?

Taking inventory of the assets may be the key to making a will. Assets should be mentioned in your will. Any items not specifically mentioned may be addressed in a catchall clause of your will called a residuary clause, which generally states, "I give the remainder of my estate to ..." Without this clause, items not specifically mentioned will be distributed in accordance with state law.

Outstanding debts usually will be paid by your estate before your beneficiaries receive their shares. You may want to clear up debts that you know will be a problem or make specific provisions for payment of those debts in your will.

Remember to be specific when naming beneficiaries. For example, state the person's full name as well as his or her relationship to you (child, cousin, friend, etc.) so your personal representative will know exactly who you mean. Clarity will also help to prevent challenges to your will.

States require that you sign the will in front of witnesses. The number of witnesses varies by state and a witness should not be a beneficiary under the will.

Updating the Will

You'll probably need to update your will several times during the course of your life. For example, a change in marital status, the birth of a child or a move to a new state should all prompt a review of your will. You can update your will by amending it by way of a codicil or by drawing up a new one. Generally, people choose to issue a new will that supersedes the old document. Be sure to sign the new will and have it witnessed, and then destroy the old one.

Estate Taxes

Individuals that have assets, including real estate, over \$1.0 million are subjected to extreme estate taxes that climb up as high as 55%. Wills do nothing to preserve the estate tax exemption of the first to die in a married couple's estate.

Where to Keep Your Will

Once your will is written, store it in a safe place that is accessible to others after your death. If you name bank or trust company as personal representative, they likely will hold your will in safekeeping. You can keep it in your safe deposit box, but be aware that some states will seal your safe deposit box upon your death, so this may not always be the safest place to store your will. Make sure a close friend or relative knows where to find your will. If you had an attorney prepare your will, have him or her retain a copy with a note stating where the original can be found.

A Living Will

A "Living Will" should not be confused with a "Last Will and Testament." A living will is not a part of your will. It is a separate document that lets your family members know what type of care you do or don't want to receive should you become terminally ill or permanently unconscious. It becomes effective only when you cannot express your wishes yourself. If your state recognizes a power of attorney for health care, have one executed to authorize someone to act in accordance with your present intentions.