

Why Everyone Needs A Will

Making a Will is a sobering act that's easy to put off, which is probably why most people don't have one. But it's also sobering to realize what can happen if you don't leave a valid document describing how your property should be distributed.

When someone dies without a valid Will (in the U.S.), the state supplies a ready-made one devised by legislature. Like a ready-made suit, it may fit and it may not. Abe Lincoln, a President with great experience in the practice of law, died intestate, and his estate was divided, as it still is under some state laws, into a third for his widow and a third for each of their two sons. In some instances this could work out well enough for all concerned. But in Lincoln's case one son was fully grown and the other was 12 years old, so the arrangement may not have been considered ideal by his widow.

The possibilities of inequities when there is no Will are nearly endless. A hostile relative might be able to acquire a large share of your estate, for example, or a relative who is already well-fixed might be able to take legal precedence over needier kin.

So you need a Will, a carefully drawn one. Oral (or nuncupative) Wills are not legal in some countries. Handwritten (or holographic) Wills are legal in some countries but can create complicated and expensive problems for the survivors.

That's why it makes sense to pay a competent lawyer a reasonable fee to write a document that delineates your wishes and will stand up later to scrutiny in probate court. Trying to save a few dollars, or even a few hundred if you have a complex estate, can cost far more in the long run.

Making the decisions.

A lawyer's time is money, so have some basics straight before you go to see one. Start with a list of your assets – real estate, bank accounts, stocks, bonds, cars, boats, life insurance, profit sharing and pension funds, business holdings, money owed to you, and the like. Note for the lawyer's benefit any trusts and jointly held property so he can determine whether they can pass under a Will. You usually need

not list every piece of jewelry, every stick of furniture; making specific bequests of long lists of items in a Will can needlessly complicate matters and lead to extra costs and delays. The executor of your estate can often carry out your separate instructions simply and directly. Ask your lawyer's advice on this.

Choose your executor carefully. Naturally, he or she should be someone you trust – a relative, a friend, your lawyer, anyone you feel is able to take on the responsible task of disposing of your estate. Remember, however, that the person should be willing, so check before you name someone who might later prove reluctant, forcing the court to appoint someone you perhaps would not have chosen.

A husband and wife should decide together whether to name each other or a mutually-agreed-upon person as executor in their Wills.

If you have minor children, you'll also have to decide how you want them taken care of if you and your spouse both die. This involves setting up a guardianship, a task that has two principal functions. The first is to provide for the proper care of the children until they reach the age of majority. The second entails managing prudently the money and property you leave to the children and distributing it to them as you would wish.

You might pick one person for both tasks if you know someone who could handle them. Or you might name a warmhearted relative to raise the children and a business-minded relative (perhaps the executor) to handle the financial end. Try to pick people who get along well together.

Next you'll have to decide how you want your estate distributed. This is obvious and straightforward in many instances, such as leaving everything to your spouse or your children if both of you die.

What you want to do may be more complicated. Say you want an aged aunt to live in your house for the rest of her days and then you'd like the house to go to your two children in equal shares. Your lawyer can show you how to do that. Be concerned only with what you want to do and leave it to the lawyer to tell you how best to accomplish it. He might, for example, suggest one or more trusts of various sorts that would accomplish your aims and minimize taxes later.

Working out the details.

If you don't already have a lawyer, ask an officer at your bank or a business acquaintance for recommendations. For most Wills, a competent generalist should be able to do the job at a reasonable price. If your estate is substantial, it may be a good idea to consult an attorney who specializes in estate planning so you can minimize the effects of estate (inheritance) taxes. Don't conclude hastily that your estate is too small for you to worry about taxes. Insurance policies, company benefits, investments and rising real estate prices could make your estate larger than you think.

When you first talk to a lawyer, get a clear understanding of the fee. Depending on the lawyer, the size of the city or town and the complexities of the document you need, the fee can range from a nominal one for a simple Will to a heavy hourly fee for the time involved in planning a complex estate. There is no such thing as an average price.

Once you get down to cases with your lawyer, state clearly and completely what you want to do. The lawyer will likely explain several ways of accomplishing your objective. IF you specifically want to leave someone out of your Will, especially a child, be sure to say so. Your lawyer will probably advise you to mention the person by name so that he or she can't later contest the Will on the ground that you merely forgot.

You may want to specify in your Will that the executor is to serve without bond. This can save your estate large nonrefundable bonding fees that otherwise would be required. The lawyer should recommend wording broad enough to cover a rise or drop in your fortunes, and provisions for a common disaster that simultaneously takes the lives of you, your spouse and your children.

Usually, your lawyer will supervise the signing and witnessing of the Will to make sure it is done properly and can be probated with the fewest problems.

Don't worry about your situation changing in the future. You can always amend the Will. But don't do it yourself. You could invalidate the entire document in the eyes of the court, thus undoing the good you've done so far. Go to the expense of having the lawyer make the changes.

Don't keep the Will in a safe-deposit box because it may be sealed after your death, making the document unavailable for a period of

time. Perhaps you can keep it in the lawyer's vault or with your other important papers. You may also want to give a copy to the executor or the principal beneficiary. Subject to your lawyer's advice, consider including a letter of last instructions that will help your executor gather your affairs together and carry out your wishes.

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