

Making a Will

About Making a Will

The simplest way to ensure that your funds, property and personal effects will be distributed after your death according to your wishes is to prepare a will. A will is a legal document designating the transfer of your property and assets after you die. Usually, wills can be written by any person over the age of 18 who is mentally capable, commonly stated as "being of sound mind and memory." Your state may impose additional requirements.

Did You Know?

Though most Americans are aware they need a will, the majority --- about 70% --- don't have one. Without an estate plan, the government may get nearly half of your assets. Protect your hard earned money.

Everyone Needs One

Although wills are simple to create, most Americans die without one (or *intestate*). Without a will to indicate your wishes, the court steps in and distributes your property according to the laws of your state. Wills are not just for the rich; the amount of property you have is irrelevant. A will ensures that what assets you do have will be given to family members or other beneficiaries you designate. If you have no apparent heirs and die without a will, it's even possible the state may claim your estate.

Having a will is especially important if you have young children because it gives you the opportunity to designate a guardian for them in the event of your death. Without a will, the court will appoint a guardian for your children.

Elements of a Will

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

Two of the most important items included in your will are naming a guardian for minor children and naming an executor.

Naming a Guardian

In most cases, a surviving parent assumes the role of sole guardian. However, it's important to name a guardian for minor children in your will in case neither you nor your spouse is able and willing to act. The guardian you choose should be over 18 and willing to assume the responsibility. Talk to the person ahead of time about what you are asking. You can name a couple as co-guardians, but that may not be advisable. It's always possible the guardians may choose to go their separate ways at some later date, and, if so, a custody battle could ensue. If you do not name a guardian to care for your children, a judge will appoint one, and it may not be someone you would have chosen.

Naming an Executor

An *executor* is the person who oversees the distribution of your assets in accordance with your will. Most people choose their spouse, an adult child, a relative, a friend, a trust company or an attorney to fulfill this duty. You should expect your estate to pay an independent executor for this service.

If no executor is named in a will, a probate judge will appoint one. *Probate* refers to the legal procedure for the orderly distribution of property in a person's estate. The executor files the will in probate court, where a judge decides if the will is valid. If it is found to be valid, assets are distributed according to the will. If the will is found to be invalid, assets are distributed in accordance with state laws.

Responsibilities usually undertaken by an executor include:

- Paying valid creditors
- Paying taxes
- Notifying Social Security and other agencies and companies of the death
- Canceling credit cards, magazine subscriptions, etc.
- Distributing assets according to the will

Preparing a Will

Start by organizing what you need: 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. Ask yourself 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 your 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 and clear 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 executor 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. A witness should not be a beneficiary under the will. Only one copy should be signed.

Updating a 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, then destroy the old one.

Estate Taxes

The property included in your will may be subject to taxation. In planning your will, take into account the following:

- Federal estate taxes will generally be due if the net taxable estate is worth more than \$1,000,000. This amount is scheduled to gradually increase from \$1,000,000 in 2002 to \$3,500,000 in 2009, so that it will eventually shield \$3,500,000 in gift or estate transfer from tax per taxpayer. Estates in excess of the exempt amount can be taxed at a rate from 37% to 50% (the top percentage is scheduled to gradually decrease to 45% in 2009). Also, note that these estate tax changes are scheduled to be repealed in 2010. If not extended, the tax law will revert to the estate and gift tax provisions in affect in 2001. Consult a tax or financial professional to determine a plan that is right for you and your family.
- State death or inheritance taxes
- Federal income taxes
- State income taxes

You may be able to minimize your estate tax by establishing a trust or giving gifts during your lifetime. You can also cover the cost of estate taxes by purchasing a life insurance policy intended to pay taxes. Talk to an experienced estate attorney or contact FEC to find out more about how this works.

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 a trust company as executor, it 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 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.

Discuss your wishes as reflected in your living will with family members, and be sure they have a signed copy.

Plan Ahead

The end of your life is something one probably does not want to dwell on, but thinking about what will happen to your loved ones and your assets and personal possessions is important. Making sure you've done all you can to make their lives easier will give you peace of mind. And once your will is drafted, you won't have to think about it again unless something significant in your life changes.

About Being An Executor

An Executor is the person responsible for settling a deceased person's estate. As executor, your duties include inventorying, appraising and distributing assets; paying taxes; and settling debts owed by the deceased. You are legally obligated to act in the interests of the deceased, following the wishes expressed in his or her will. If all this sounds a bit overwhelming, keep in mind that you can hire professional help—for example, an attorney to help with the probate process or an accountant to file taxes.