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WILLS - FREQUENTLY ASKED QUESTIONS

What if I do not have a Will?

Answer: If there is no Will, the property is distributed according to the state law of intestacy and not necessarily as desired by the decedent.

What are some reasons to have a Will?

Answer:

- 1. Guardianship:** A guardian for your children can be chosen by you, not the court
- 2. Money Saved:** Your estate can save money by waiving bond provisions that could be required by the court
- 3. Property to Minors:** You can avoid assets going directly to minors (otherwise there might need to be court supervision for the sale of these assets)
- 4. Appointment of Executor:** You can determine who Will take care of your assets and their distribution

Who gets my property if I don't have a Will?

Answer: Generally speaking-

- 1. Spouse, no children:** To spouse
- 2. Spouse, children:** Up to a certain amount to spouse, after that amount split between children and spouse (*problem-see above Par. #3*)
- 3. No Spouse, no children:** To parents, if none, then siblings
- 4. No Spouse, children:** To children

Do I need a Will?

Answer:

- 1. If you have minor children:** Definitely.
- 2. If don't have minor children:** Probably, unless your answer is No to the following:
 - a.** Do your personal wishes fall in line with the laws of intestacy?
 - b.** Do you wish to choose your personal representative? Someone must preserve, gather and distribute your assets. Sometimes an independent 3rd party can be appointed by the court (i.e. another attorney) and be paid from estate funds

How long does a Will last?

Answer: A properly drawn and executed Will is generally effective until it is changed or revoked

Am I required to leave my spouse anything?

Answer: Yes to a point. Your spouse is entitled to money up to a certain amount and then a portion of the remaining amount.

Am I required to leave my children anything?

Answer: No

If I am married, do we need separate Wills?

Answer: Yes

Can I change or revoke my Will?

Answer: Yes

When should I change my Will?

Answer: Usually when:

1. There is a change in circumstances;
2. You wish to change the names of Executors, Guardians or Trustees; or
3. You wish to add or remove someone from the Will

Who should I appoint as Executor?

Answer: The Executor (or Executrix if a woman) should have common sense and good judgment. Geographical proximity to the probate court and the decedent's property (especially real estate) should be considered as well. The Executor may hire lawyers, accountants and other professionals.

What are some typical excuses for not doing a Will?

Answer:

1. **"My kids Will respect my wishes"**-It is possible that their present or future spouses could be a problem instead. Also, your family might not have a clear understanding of all of your wishes. Moreover, family disputes can occur if there are different interpretations as to what your wishes are.
2. **"I want my property to go to my spouse anyway"**- Your property might not just go to your spouse. It may have to be split with your children.

L The problem is that an independent person might have to be appointed to oversee the children's interests (if they are minors). That means that person might have to approve the sale of assets (like your house) which Will cost money and prevent your spouse from making independent decisions.

What is Probate?

Answer: This applies when there is a Will. It is here that final debts are settled, and legal title to property is formally passed from the decedent to his/her heirs. It is initiated in the county of the decedent's legal residence at death. Usually, the first step is taken by the person named as Executor, or other interested person who has the original Will. When there is no Will, the process is called Administration

└ **Basic Steps:**

1. Collection, inventory and appraisal of all assets that are subject to probate;
2. Payment of taxes and creditors; and
3. Formal transfer of estate property according to the Will, or by the state laws of intestate succession, if there is no Will.

What about computer generated forms?

Answer: Typical problems:

1. Most computer generated forms are not state specific;
2. It is possible that the proper procedures might not be followed (such as improper individuals being witnesses;
3. Witnesses might have to appear in court after your death (this can be avoided with a form that can only be used when an attorney supervises the Will); and
4. Your wishes might not be properly reflected

What other documents are part of a Simple Estate Plan?

Answer:

1. **Power of Attorney-** Allows you to give authority to another to manage your financial and legal affairs on your behalf.

a. **Durable Power of Attorney-**Effective immediately. It survives disability

b. **Springing Power of Attorney-**Only effective or "springs", into effect upon the happening of a particular event.

└ If there is no Power of Attorney in effect, a court proceeding and the appointment of a Guardian Ad Litem might be required.

└ Many "do it yourself" forms are not "durable" and become invalid precisely when they are most needed- at the time you become unable to act for yourself.

2. **Health Care Proxy-** Allows you to appoint another person to make health care decisions if you should lack the ability or capacity to make these decisions yourself.

└ Even if you are married or a parent-adult child relationship exists, there is no automatic right to act on behalf of the respective spouse, parent or adult child.

3. **Living Will-** Allows you to state your wishes about withholding or withdrawing life-sustaining treatments that prolong the process of dying.

└ It is a good back-up for a Health Care Proxy because it is clear and convincing proof as to what your wishes are, can be used even if your health care agent is unavailable, and can be honored by other states that do not honor the Health Care Proxy.