

Last Will and Testament



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BECAUSE NO ONE SHOULD HAVE TO FACE A LEGAL PROBLEM ALONE.



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WHAT IS A WILL?

A Will is a document which states how your property will be distributed when you die.

WHAT PROPERTY WOULD MY WILL COVER?

A Will states what you want to do with all property which you own that is not “automatically” transferred at your death. If you die without a Will, the state has laws which say how your property will be distributed.

HOW DOES "AUTOMATIC TRANSFER OCCUR?"

Insurance is an example of an “automatic” transfer. When you take out an insurance policy and name someone other than yourself as a beneficiary, you have set up an automatic transfer. No court order is necessary for the insurance benefits to be paid to the named beneficiary. Other examples include joint bank accounts with “right of survivorship” and real property held by you and your spouse as “tenants by the entirety,” both of which pass to the surviving owner automatically. The assets pass outside of the probate estate and therefore are not affected by your Will and are not usually subject to claims of your creditors.

WHY SHOULD I MAKE A WILL?

1. You want part or all of your property to pass to a friend or to charity.
2. You want one heir out of several to inherit more or less than the others, or you want to disinherit an heir completely.
3. You have no immediate family and wish to give your property to one distant relative rather than all of the others.
4. You have minor children and wish to name a particular guardian for them. (This is important if you are a single parent or if you and your spouse die at the same time).
5. One or more of your heirs cannot “handle” money, but you still wish to provide for them in some way.
6. You wish to give specific items to specific persons.
7. You wish to appoint a particular person to look after your affairs. (This person is called an Executor).
8. You are not sure whether you fit one of these

NOTE: You may not effectively disinherit your spouse. Only divorce from that spouse will terminate his or her right to dissent (get certain property when you die) . If you fail to provide for your spouse, he or she may elect to “dissent” from the Will. This is an absolute right and entitles your spouse to a percentage of your property determined by the length of your marriage. Your spouse can also ask for and receive a certain amount of exempt personal property. Your spouse can ask for one year’s support from the estate.

DO I NEED AN ATTORNEY TO MAKE A WILL?

A Will is a document which states how your property will be distributed when you die.

It is possible in the State of Tennessee to make a completely valid Will on your own. This is called a Holographic Will. It must be completely in your own handwriting and signed and dated by you. It is not necessary for a handwritten Will to be witnessed and notarized. (Otherwise, to be valid, a Will must be witnessed and should be prepared by a lawyer to ensure that proper procedures are followed.) If you choose to make a handwritten Will, you need to remember to include the following:

1. Name someone to be Executor (person you want to handle your affairs and make sure your Will is enforced the way you have written it), as well as someone to be Co-Executor or to act as alternate Executor.
2. Specify that the Executor is to serve without bond. If this is not done, the Executor will have to post a bond, paid by your estate, at the time the estate is probated.
3. It is advisable to name alternate beneficiaries in the event that your first beneficiaries predecease you.
4. If you have minor children, you may want to express a preference for a guardian.

A Holographic Will has several disadvantages. It may not be recognized in another state should you move. It must be “proved” in court, by two people who can identify your handwriting. Also, if any typewriting appears on the holograph Will, it will be deemed invalid. ALWAYS REMEMBER that the best intentioned person can make a Will which does not work the way they wanted. It is always best to seek legal assistance in preparing a Will.

WHERE DO I LOCATE A LAWYER?

Check with your family and friends for the name of a lawyer with whom they are familiar. If this is not possible, check for a local Lawyer Referral Service. You may also check with the yellow pages under "attorneys."

CAN A WILL EVER BE CHANGED?

A Will does not "speak" for you until the date of your death. Thus, you can change it if circumstances change, by having your attorney prepare a "Codicil" (for one or two changes) or a whole new Will, if necessary. (Never attempt to change a witnessed Will by striking out some portions and writing in new ones).

WHAT OTHER THINGS MUST I CONSIDER?

Who will I appoint to act as my Executor? This should be a person over 18 years old whom you trust to handle your affairs as you would. The general rule is that this person must be a resident of Tennessee, or a resident must be named as co-executor. There are exceptions where the executor is a specified relative and only specified relatives are beneficiaries. Banks also can function as executors. What about Inheritance taxes? If you have significant assets, consult an attorney regarding tax consequences and alternative methods of transfer.

WHAT IF I DON'T HAVE A WILL?

If you do not have a Will, your property will pass to those persons who are considered your "heirs" under the laws of Tennessee. This is called "intestate succession." The Probate Court will appoint an administrator to distribute your property. Your surviving spouse has priority as administrator. It is quite likely that a bond will be required of the administrator. Your estate must pay the bond cost.

WHO ARE MY HEIRS?

Tennessee laws protect the immediate family. After debts and expenses are paid out of your estate, all your property subject to intestate succession (without a Will) such as land, bank accounts, car, etc. will be distributed as follows:

1. To your spouse and your children. Your spouse will take a child's share, but never less than one-third. Your spouse may ask for additional property.
2. If you have no children, your spouse will inherit everything.
3. If your spouse dies before you, your children or their descendants will take everything. (Descendants share their deceased parent's portion equally.)
4. If you leave neither spouse nor children, your parents inherit everything in equal parts.
5. If your parents have also died before you, your brothers and sisters, or their children, will take your estate.
6. If you die leaving neither spouse, nor children, nor parents, nor brothers and sisters, your property will pass to more distant relatives, if any, or to the state.

KEEPING YOUR WILL SAFE

Your original Will needs to be protected. Although many banks will seal a safe deposit box as soon as they learn of the owner's death, it is much more accessible now than in the past. Keep a copy of your Will with your other important papers in the house, but the original can be in the safe deposit box. You need to tell your executor where you have put the Will. There is another alternative. You may have your Will filed in the County Probate Office for a small fee. It will be sealed and kept in a vault with limited access, but available to you during normal business hours. You can always retrieve your Will if you need to make changes or to cancel the Will. There is a fee each time you remove the Will and redeposit it. This fee is usually very reasonable.

LAET'S OFFICES ARE OPEN MONDAY THROUGH FRIDAY FROM 8:30 AM TO 5:00 PM

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

