

Last Will & Testament

Frequently Asked Questions

What Is A Will?

A Will is a legal document that allows you to set forth the manner in which your property will be distributed at your death.

Is A Will Expensive?

Attorneys generally charge an hourly rate for estate planning services and may spend a few hours counseling you and preparing your estate plan, which typically includes a Will, Powers of Attorney for Health Care and Property, and a Living Will. However, a skillfully drafted Will can significantly reduce not only probate fees and costs, but also taxes. In most cases, the savings created by a professionally prepared Will is far in excess of the cost of the entire estate plan.

Can I Prepare My Own Will?

Legally, yes. However, a Will must be prepared and witnessed in strict accordance with state law. The complex legal requirements and potential tax implications of a Will make an attorney's advice essential. Only an experienced estate planning attorney can ensure all applicable legal requirements are met and advise you as to the best estate planning options for you and your family.

Can I Change My Will?

Yes. As long as you are mentally competent and physically capable, you may change your Will by executing a new Will (which revokes and replaces your prior Will) or by amending your existing Will (by means of a Codicil), which must be prepared and witnessed in strict accordance with state law.

Can A Will Eliminate or Reduce Estate Taxes?

Yes. Under certain circumstances, a skillfully drafted Will can provide for your surviving spouse (by trust or otherwise) in a fashion that eliminates or reduces estate taxes payable on the death of the surviving spouse; these taxes would otherwise be due in absence of a carefully drafted Will.

Besides Disposing of Property, What Else Can Be Done By A Will?

By the terms of your Will, you may establish a trust or trusts not only to manage and hold assets for the benefit of your loved ones, but also to realize estate, gift, and income tax savings. You may also use your Will to nominate a guardian to care for your minor children and manage any assets they inherit.

If I Have A Will, Does That Mean I Will Avoid the Cost of Probate?

No, but the cost of probate may be greatly diminished with a carefully drafted Will. By law, a surety bond must be obtained at the expense of your estate, but you may waive this requirement by the terms of your Will. A skillfully prepared Will can also eliminate unnecessary delays and allow your executor to act more efficiently and cost effectively by authorizing your executor to act with a minimum of court intervention.

What Happens If I Die Without A Will?

If you die without a Will (i.e. die "intestate"), state law dictates who is entitled to manage your estate, and the court selects a guardian for your minor children. Your property will be distributed in accordance with the state laws of intestacy, which set forth rigid, inflexible formulas for the distribution of your property. Even if you intend to leave your property to the same persons who would receive your property under the laws of intestacy, a properly drafted Will can yield substantial cost savings in the probate of your estate.

May I Dispose Of My Property Under My Will In Any Way I Wish?

Generally yes, but with a few exceptions. For example, a surviving spouse has the right to elect to receive a fixed share of a deceased spouse's probate estate, and under certain circumstances, surviving minor children are entitled to a share of a deceased parent's probate estate even when a Will makes no provision for the spouse or minor children.

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