

# **What You Should Know About Wills**

## **INTRODUCTION**

A will avoids costs and complications for your heirs when you die. Besides providing instructions about gifts of your property—like your home, car, investments and jewelry—your will can provide instructions for payment of your debts, selection of an executor for your estate, and appointment of a guardian for your children. Without a will, your property will be distributed according to state law and a court may select an administrator for your estate and a guardian for your minor children. Your lawyer can help you prepare a valid will that minimizes taxes and reduces the time and expense of handling your estate.

## **DISADVANTAGES OF DYING WITHOUT A WILL**

If you leave no will, you will have given up your right to decide who inherits your property. Your property will be distributed according to state law, which might be quite different from your preferences. And without a will, you can't disinherit heirs. If you leave no will, you also lose the opportunity to select a guardian for any minor children and an executor for your estate. Court-appointed administrators and guardians may not be the family member or friend that you would have chosen to handle your affairs.

Dying without a will can be costly and may complicate the transfer of your property to your heirs. For example, the estate may have to pay bond premiums if there is no will stating that you don't require executors and guardians to post a bond. In addition, estate administration proceedings without a will may delay transfer of property to your heirs.

## **CHANGING YOUR WILL**

You may need to change your will if you move to a new state, marry, divorce, have a child, acquire substantial property, or suffer the loss of a loved one. Tax law changes may also require a will update. Read your will at least once a year to consider changes. You can make the changes by writing a new will or by preparing an amendment to an existing will called a codicil. A new will is best if there are many changes. A codicil may be appropriate for a small change, but it must be made with the same formalities as a new will-crossing-out or writing inserts onto your will might invalidate it.

## **APPOINTING AN EXECUTOR**

You should appoint an executor in your will. An executor locates heirs, lists property, pays debts, and distributes property to your heirs. A relative or friend can serve as your executor, but you should consider using a professional executor (such as a bank or trust company) if you have a large or complicated estate. An executor should be someone who is familiar with managing property, financial matters, and record-keeping. Before naming an executor, confirm that the person is willing to serve. Your lawyer can help you select

the best executor. As noted above, your will can state that the executor is not required to furnish a bond, thus saving your estate this expense.

### **APPOINTING A GUARDIAN**

If you have children under 18, you should appoint a guardian in your will. Otherwise, if you and your spouse die at the same time without such an appointment, a court will select a guardian to care for your children and manage their inheritance until they become adults. You can create a trust to control the property transferred to your children. A trust is useful if you are concerned that the children may lack the maturity to handle their inheritance after age 18. Your lawyer can help you to select a guardian and create a trust in your will that protects your children and your wishes.

### **KEEPING YOUR WILL IN A SAFE PLACE**

Your will should be kept in a safe place so that it can be promptly located when you die. You may wish to have your lawyer keep the original to protect it from damage or loss. Although you are not required to give your executor a copy of the will, you should tell both your executor and a trusted family member where your will is stored.

### **LIVING WILLS**

In addition to ordinary wills that state your wishes for your property when you die, Florida law permits "living wills" that instruct your doctors to withhold life support equipment and other measures while you are alive. A "living will" is important if you become comatose with no hope of regaining consciousness. Your "living will" should be written in a document separate from your ordinary will and you should re-sign and re-date it every few years to comply with your state law and to reaffirm your preferences. Give a copy of your "living will" to your doctors and to a close family member. Your lawyer can help you write a "living will" and advise you about re-signing it every few years to keep it valid.

### **MAKING YOUR FUNERAL ARRANGEMENTS**

You can include instructions for your funeral arrangements in your will. However, you may wish to put these instructions in a separate letter. Give a copy of the instructions to your executor or a family member or friend to avoid delays when you die. You can also include instructions about gifts of your body organs to hospitals for research or transplants. Such instructions for gifts of body organs can be noted on your driver's license or a separate donor card that you can carry in your wallet.

### **REDUCING THE TAXES ON YOUR ESTATE**

Federal estate taxes and state inheritance taxes may be deducted from your property before it is transferred to your heirs. A federal estate tax applies if the value of your

property exceeds an exempt amount that varies depending on the year of your death. Following is a table of the exempt amount:

### **Year of Death Exempt Amount**

- 2002 - 2003 \$1.0 million
- 2004 - 2005 \$1.5 million
- 2006 - 2008 \$2.0 million
- 2009 \$3.5 million
- 2010 No estate tax

*2011 and after, \$1 million, unless Congress extends the repeal of estate taxes.*

A special \$1.3 million exclusion applies to estates that hold investments in family businesses and farms. Your lawyer can help you prepare an estate plan that will reduce federal and state taxes. For example, your lawyer may suggest that you make gifts before you die to reduce taxes, hold property in joint tenancy with your spouse, transfer ownership of life insurance policies to your spouse or heirs, or use a trust arrangement. Your lawyer can also help you shift the tax responsibility among heirs if you would like some of them to receive their shares without being taxed on it.

### **REDUCING PROBATE COSTS**

Probate costs include court fees, bond premiums and the fees of professionals who assist your executor with the administration of your estate. Your lawyer can help you reduce probate costs with estate planning tools like joint ownership, living trusts, lifetime gifts, and business recapitalizations. For example, your lawyer can prepare a living trust in which you appoint a trustee to distribute your property when you die. Some estate planning tools can help you reduce probate costs, but they may not lower your estate taxes.

### **PREPARING YOUR WILL WITH A LAWYER**

Your lawyer can help you draft your will and explain the tax consequences. Your lawyer can also help you comply with the detailed requirements for a valid will, see that your property is distributed as you wish, and reduce estate taxes and probate costs. The legal fees are usually well spent and often less than the added costs and taxes that would result from dying without a will.

### **CONCLUSION**

You should have a will if you own any property—a home, a car, bank accounts, stocks and bonds, retirement benefits, jewelry, clothing, household goods, and so on. A will lets you distribute your property as you want with a minimum of costs and taxes. It is an opportunity to select an executor for your estate, a guardian for your children, establish

trusts and dispense with costly bonds. If you don't have a will, ask your lawyer about drafting one without delay.

## **CHECKLIST FOR WILLS:**

### **1. ESTATE PLANNING TOOLS:**

- A. Will
- B. Joint tenancy
- C. Living trusts
- D. Lifetime gifts
- E. Business recapitalization
- F. Durable Powers of Attorney
- G. Designation of Preneed Guardian

### **2. SELECTING YOUR HEIRS:**

- A. Spouse
- B. Children
- C. Parents
- D. Other relatives
- E. Friends
- F. Charitable organizations

### **3. IDENTIFYING YOUR DEBTS AND LIABILITIES:**

- A. Credit cards
- B. Loans
- C. Home mortgages

### **4. LISTING YOUR PROPERTY AND THE HEIRS TO RECEIVE IT:**

- A. Automobiles and boats
- B. Bank accounts
- C. Computers and electronic equipment
- D. Home and household goods
- E. Insurance
- F. Jewelry
- G. Rental property
- H. Stocks and bonds

### **5. APPOINTING AN EXECUTOR FOR YOUR ESTATE**

### **6. NAMING A GUARDIAN FOR YOUR CHILDREN**

### **7. CREATING TRUSTS FOR ALL OR A PART OF YOUR PROPERTY**

### **8. ALLOCATING TAXES AMONG YOUR HEIRS**

### **9. OTHER ISSUES: PROVIDING FOR FORCED HEIRS, DISINHERITING UNWANTED HEIRS, COORDINATING WITH THE WILL OF YOUR SPOUSE, DIRECTIVE TO DOCTORS TO WITHHOLD LIFE SUPPORT (“LIVING WILL”)**

If you're considering drafting a will or making other estate planning arrangements, please consult with your lawyer. If you do not have a lawyer, please consider contacting our offices at the number listed below. We look forward to working with you!

This pamphlet provides general information. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation. The hiring of a lawyer is an important decision. Let us provide you with free information concerning our experience and qualifications.