

WILL BASICS

What Is A Will?

Very simply, a will is a written document by which a person provides for the disposition of his or her other property (the “estate”) at death, names an individual to administer his or her estate, and appoints a guardian for minor children.

Who Should Make A Will?

Every person who has minor children and/or who owns property should make a will. Joint ownership of property is not always an effective method for insuring that your property will pass to the proper persons after you die. For example, if both joint owners were to die together in an accident without wills, their property would be distributed according to Maryland law, which might not be how they intended.

Who Gets My Property If I Die Without A Will?

This depends on how your property is owned and whether you are married, have living children or have living parents. Generally, in Maryland, if you die without a will (“intestate”), your spouse is a beneficiary by law; however, he or she will share your estate with your children, or if you have no children, with your parents. (*See Maryland Intestacy information sheet.*)

What Concerns Should I Have Regarding My Minor Children?

A will allows you to appoint a guardian to have custody of any minor children who may become orphaned. The guardian should be the person who you would most like to take your place as parent to raise your children. Most testators with minor children also provide for a trust to own the property inherited by those children until the children reach a responsible age. A trustee must be named to handle the trust. If you die intestate leaving orphans under age 18, guardians must be appointed by the court to raise the children and handle their property. These court procedures can be lengthy and costly, and a court-appointed guardian will be required to report back to the court periodically. Trustees appointed in a will operate free of court supervision, but are legally required to act in a responsible manner.

Who Administers My Estate?

A will allows you to select the Executor or Personal Representative of your estate. This person is subject to court supervision and has the basic duties of gathering and protecting your assets, paying creditors, filing tax returns, and making the distributions set forth in your will. If you die intestate, the court will appoint someone to administer

your estate who will be bound to distribute your property according to Maryland law. The process by which all this happens is generally called “probate”.

What Else Can A Will Do For Me?

A will can be used to help minimize estate tax liability. Generally, a married couple with a joint gross estate of over \$5,000,000 should consider estate tax planning.

Do The Provisions Of My Will Apply To Everything I Own?

No, a will does not control the disposition of certain types of property:

- Property owned by two (or more) people jointly with right of survivorship will pass automatically to the survivor(s), regardless of what the will says. Most types of property can be owned jointly with right of survivorship, including real estate, automobiles, bank accounts, stocks, and bonds.
- Property controlled by a beneficiary designation passes to the named beneficiary regardless of what the will says. The most common example of such property is life insurance. However, there are other types of property for which beneficiary designations are made, including pension and profit sharing plan accounts, IRAs and bank accounts (POD). The owner of such property can bring it within the control of his or her will by designating his or her estate as the beneficiary, but this may subject it to Maryland inheritance tax and accelerate income taxes.
- Property owned by a revocable trust (sometimes called a “living” trust) will be disposed of in accordance with the trust provisions. The main advantage of a revocable trust is the avoidance of the time and expense associated with probate proceedings in court. Another important advantage of a revocable trust is that it allows for someone other than the creator of the trust to independently manage the property, which is often helpful in the case of the elderly or the disabled. The main disadvantages are the expense of establishing the trust and the cost and inconvenience of transferring the property to the trust. The advantages and disadvantages of a revocable trust should be carefully weighed before one is established.

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