



Questions & Answers

1. Why don't more people have a will?

Because they don't realize how important a will is. Some think they don't own enough property to need one. Some believe that life insurance and retirement plan beneficiary designations or joint ownership arrangements are sufficient. Some think their spouses inherit everything automatically. Some don't want to talk about death and many people simply procrastinate.

2. What happens when people die without a valid will?

Every state legislature has written laws that create a "state-written will" for those who haven't made their own. The laws vary from state to state, but you can be sure that they probably don't have your particular wishes in mind.

3. Aren't state laws adequate for most situations?

No, because they're impersonal. They don't make exceptions. They

may also deplete your estate unnecessarily, as certain fees and other expenses can be minimized or eliminated through a well-planned will. The laws also are written to allow a court to decide who should be your administrator or who should be guardian of your surviving minor children.

4. Should both husband and wife have wills?

Yes. It's important that each has a will, even when the two wills may be essentially the same.

5. Does everyone have an "estate"?

Yes. The smaller the estate, the more important that it be settled quickly as delays usually mean increased expenses. Besides, your estate may be larger than you realize.

6. Doesn't joint ownership make a will unnecessary?

No. That's a common misconception. Joint tenancies are a poor substitute for a will, but can often work well in conjunction with one.

7. What is the “unlimited marital deduction”?

A husband or wife may leave all property to his or her spouse and pay no federal estate taxes on the estate of the first to die.

Testamentary Services wills are drafted to take full advantage of the marital deduction and eliminate taxes in this manner.

8. Can I write my own will without using an attorney?

You can, but due to errors, the court may be forced to declare many “homemade” wills invalid. There is no substitute for professional expertise. The Testamentary Services program is designed to place experienced estate-planning attorneys at your disposal at no charge.

9. Is my will confidential or can anyone read it after I die?

A will becomes a public document at death, administered through probate and becomes available to the public through state courts.

10. Can I name my spouse as personal representative?

You can and it is often recommended. A close relative, friend, or professional fiduciary may also be named.

11. Must I get permission from the personal representative before naming him or her in my will?

It's not a legal requirement, but a courtesy. Your assets or the content of your will may dictate the

qualifications necessary for a person to serve effectively as your representative and may affect his or her willingness to serve.

12. After agreeing to serve, can a personal representative later refuse?

Yes, and this does occur for reasons of ill health, travel, or the press of other business. That is one reason it's wise to name an alternate.

13. What happens if my personal representative dies before I do, and I have not named an alternate?

The court appoints an alternate administrator, who may not be the one you would choose. Naming an alternate representative, preferably younger than you, is a good idea. You might also consider naming a corporate fiduciary as your final alternate.

14. Should I include funeral instructions in my will?

No. It is usually better to leave separate instructions and tell your relatives or close friends where to find them. Usually the funeral has already occurred before the will is pulled out.

15. What do my personal representative / executor do?

- Obtains the death certificate and provides copies to your insurance company, the Social Security office, and others.
- Notifies banks where you have accounts or safe-deposit boxes.
- Arranges for appraisal of your property, if required.
- Safeguards your property.
- Presents your will to the probate court.
- Defends your will if challenged.

- Locates witnesses to your will, if necessary.
- Collects amounts due your estate.
- Advertises for any just claims against your estate and pays them in order of priority.
- Provides interim management for business interests, if necessary.
- Inspects and maintains your real estate.
- Collects rent if and when due.
- Completes and files state and federal estate and income tax returns, as required by law, in time to avoid penalties.
- Defends your estate against improper tax assessments.
- Establishes any trusts created by your will.
- Secures any payments due such trusts.
- Disposes of your property according to your instructions.
- Prepares final accounting and obtains receipts and releases from heirs.

16. Aren't charitable bequests made mainly by wealthy persons or those with no close relative?

Not at all ! Many gifts by will are made by persons who provide for their loved ones and leave a percentage of their assets to charities that have been an important part of their lives. Even a small portion of a typical estate can be a very meaningful gift when received.

17. How do people usually make such bequests?

Many simply designate a percentage of their estate to go to the charitable organization of their choice.

18. How many witnesses does my will require?

Currently all states require two witnesses except for Vermont, which requires three.

19. Who can be a witness to a will?

A person must be mentally competent to be a witness. We recommend that you not use beneficiaries of the will as witnesses, because in most states, such a witness may not receive property left to him or her under the terms of the will unless there are enough other witnesses to prove the will authentic.

20. Must the witness read the will and know its contents?

No. They merely state that you have said it is your will and have signed it in their presence.

21. Once I have a will, should I ever have to change it?

You should review your will periodically, because even the best wills can become outdated.

22. Am I required to change my will when moving to another state?

Most states will recognize a will drafted in a state where you previously resided (if the will was properly executed in that state). But it is always a good idea to have your will reviewed when you move.

23. Once my will is completed, where should I keep it?

Sign one copy and keep it in your office, home or possibly in a bank safe-deposit box. Before storing your will in a safe-deposit box, be sure to check to see if it will be readily accessible to your executor.