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Frequently Asked Questions About Wills, Living Wills and Powers of Attorney

By Sheri R. Abrams, Attorney at Law

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WHAT DOES A WILL DO?

The simplest way to ensure that your funds, property and personal effects will be distributed after your death according to your wishes is to prepare a will. A will is a legal document designating the transfer of your property and assets after you die. Usually, wills can be written by any person over the age of 18 who is mentally capable, commonly stated as "being of sound mind and body."

WHO NEEDS A WILL?

Although wills are simple to create, about half of all Americans die without one (or Intestate). Without a will to indicate your wishes, the court steps in and distributes your property according to the laws of your state. Wills are not just for the rich; the amount of property you have is irrelevant. A will ensures that what assets you do have will be given to family members or other beneficiaries you designate. If you have no apparent heirs and die without a will, it's even possible the state may claim your estate.

Having a will is especially important if you have young children because it gives you the opportunity to designate a guardian for them in the event of your death. Without a will, the court will appoint a guardian for your children who may be someone you do not even know.

WHAT ARE THE ELEMENTS OF A WILL?

What you generally need to make a will:

1) Your name and place of residence;

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- 2) Names and addresses of spouse, children and other beneficiaries, such as charities or friends;
- 3) Alternate beneficiaries, in the event a beneficiary dies before you do;
- 4) Name and address of an Executor/ Executrix to manage your estate;
- 5) Name and address of an alternative Executor/Executrix, in the event your first choice is unable or unwilling to act;
- 6) Name and address of a guardian for your minor children;
- 7) Name and address of an alternative guardian, in the event your first choice is unable or unwilling to act;
- 8) The age you wish your minor children to have control of their inheritance;
- 9) Any burial requests you may have (cremation, where you want to be buried, etc.);
- 10) Your signature;
- 11) Two Witnesses' signatures; and
- 12) Notarization.

Two of the most important items included in your will are naming a guardian for minor children and naming an Executor/ Executrix.

WHAT IS A GUARDIAN?

In most cases, a surviving parent assumes the role of sole guardian. However, it's important to name a guardian for minor children in your will in case neither you nor your spouse is able and willing to act. The guardian you choose should be over 18 and willing to assume the responsibility. Talk to the person ahead of time about what you are asking. You can name a couple as co-guardians, but that may not be advisable. It's always possible the guardians may choose to go their separate ways at some later date, and, if so, a custody battle could ensue. If you do not name a guardian to care for your children, a judge will appoint one, and it may not be someone you would have chosen.

WHAT IS A EXECUTOR/EXECUTRIX AND WHAT DO THEY DO?

An Executor/Executrix is the person who oversees the distribution of your assets in accordance with your will. Most people choose their spouse, an adult child, a relative, or a friend to fulfill this duty.

If no Executor/Executrix is named in a will, a Probate Judge will appoint one. Probate refers to the legal procedure for the orderly distribution of property in a person's estate. The Executor/Executrix files the will in probate court, where a Judge decides if the will is valid. If it is found to be valid, assets are

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distributed according to the will. If the will is found to be invalid, assets are distributed in accordance with state laws.

Responsibilities usually undertaken by an Executor/Executrix include:

- Paying valid creditors;
- Paying taxes;
- Notifying Social Security and other agencies and companies of your death;
- Canceling credit cards, magazine subscriptions, etc.; and
- Distributing assets according to the will.

WHAT ABOUT UPDATING MY WILL?

You'll probably need to update your will several times during the course of your life. For example, a

change in marital status, the birth of a child or a move to a new state should all prompt a review of your will. You can update your will by amending it by way of a Codicil or by drawing up a new one. Generally, people choose to issue a new will that supersedes the old document. Be sure to destroy the old will after you sign a new one.

WHAT ABOUT ESTATE TAXES?

The property included in your will may be subject to taxation. In planning your will, take into account the following:

---Federal estate taxes will generally be due if the net taxable estate is worth more than \$1,000,000. This amount is scheduled to gradually increase from \$1,000,000 in 2002/2003 to \$3,500,000 in 2009 so that it will eventually shield \$3,500,000 in gift or estate transfers from tax per taxpayer. Estates in excess of the exempt amount can be taxed at a rate from 37% to 50% (the top percentage is scheduled to gradually decrease to 45% in 2009). Also, note that these estate tax changes are scheduled to be repealed in 2010. If not extended, the tax law will revert to the estate and gift tax provisions in affect in 2001. Consult a tax or financial professional to determine a plan that is right for you and your family.

---State death or inheritance taxes

---Federal income taxes

---State income taxes

You may be able to minimize your estate tax by establishing a trust or giving gifts during your lifetime.

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You can also cover the cost of estate taxes by purchasing a life insurance policy intended to pay taxes. Talk to your life insurance agent to find out more about how this works.

WHERE SHOULD I KEEP MY WILL?

Once your will is written, store it in a safe place that is accessible to others after your death. I suggest that you keep it in a fire proof box that you can purchase at any office supply store. I do not suggest that you keep your will in a safe deposit box because many states will seal your safe deposit box upon your death. Make sure a close friend or relative knows where to find your will.

WHAT IS A LIVING WILL?

A living will is not a part of your will. It is a separate document that lets your family members know what type of care you do or don't want to receive should you become terminally ill or permanently unconscious. It becomes effective only when you cannot express your wishes yourself. Discuss your wishes as reflected in your living will with family members, and be sure all your doctors have a signed copy.

WHAT IS A POWER OF ATTORNEY FOR HEALTH CARE (HEALTH CARE PROXY)?

A power of attorney for health care (health care proxy) is not a part of your will. It is a separate document that authorizes someone you name to act in accordance with your medical intentions. It becomes effective only when you cannot express your wishes yourself. You should make sure that all

your doctors have a signed copy.

WHAT IS A FINANCIAL DURABLE POWER OF ATTORNEY?

A financial durable power of attorney is not a part of your will. It is a separate document that authorizes someone you name to act in accordance with your financial intentions. It becomes effective only when you cannot express your wishes yourself. You should make sure that all your financial professionals (stockbrokers, accountants, financial planners) and banks have a signed copy.

PLAN AHEAD

The end of your life is something you probably don't want to dwell on, but thinking about what will happen to your loved ones and your assets and personal possessions is important. Making sure you've done all you can to make their lives easier will give you peace of mind. And once your will is drafted, you won't have to think about it again unless something significant in your life changes.

Sheri R. Abrams is an Attorney in Fairfax, VA. Her practice is limited to the areas of Social Security Disability Law and the preparation of wills, living wills, health and financial powers of attorney. Ms. Abrams is a graduate of Boston University's School of Management and the George Washington University School of Law. Ms. Abrams is rated "AV" by Martindale–Hubbell. More information can be found at

Top 10 Reasons Why It Is Not Wise To Write Your Own Will

By News Canada

(NC)—Although some provinces accept a handwritten, self-made will (called a "Holograph" will), it is risky to do it yourself. The cost of having a will prepared professionally by a lawyer or notary is far less than people imagine.

Here are just some of the common mistakes which can be made when individuals handwrite their own wills:

Any wills written previously are not formally revoked.

There is often no alternate Executor named.

Frequently a family member or friend is given a bequest, but then there is no consideration for what happens to this gift if the person predeceases the author of the will.

Most people who write their own wills do not make sufficient provision for the person administering your Estate. For example, the power to sell and convert assets to cash, etc.

On several occasions the language a person uses in making a home-made will can be vague or misinterpreted.

Often people take certain things for granted; for example, that their children will outlive them.

Favourite non-profit organizations such as a health charity or Greenpeace are not identified properly.

People may instruct to give a particular item to a friend or relative, but no consideration is given to what happens if that gift does not exist at the date of death.

Sometimes a house is left to a spouse, in trust for example, but then there is often no mention of who pays the expenses for upkeep of the property during the lifetime of the beneficiary.

Last, but not least, don't make the mistake of assuming because you have typewritten your own will that it is a valid Holograph will. A typewritten will has to follow the usual formalities of a prepared will, such as witnessing and signing as required by law.

If a will is not done properly, the things you have worked hard for all your life may not be looked after in the manner you would have wished – not to speak of the confusion left behind for loved ones, at a time when they are least able to cope with such difficulties.

For a free copy of the booklet "Questions & Answers About Wills" which has more helpful information about this topic, please write to: Greenpeace Canada, 1726 Commercial Drive, Suite 200, Vancouver, B.C. V5N 4A3.

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