Last Will & Testament Estate Planning Guide

Protect your loved ones, make your wishes known, and award your assets as you desire. Contains the information you need to plan your estate responsibly and affordably.

Includes:
Estate Planning Guide
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Welcome!

You should only use the Wills on the www.veteranswillcenter.org website if:

- You live in the United States.
- None of the property which will be named in this Will is located in a foreign country.
- You have no reason to believe that this Will shall be contested or disputed by anyone.
- The total value of your estate (all property and assets) is less than $5,450,000 in 2016 and $5,490,000 in 2017. These are the amounts of the Federal estate tax exemption. If your assets exceed these amounts you should consult an attorney.
- You do not intend to disinherit or exclude your spouse.

When a Will Is Not Enough

If you're young, in good health, own limited assets, and have a pretty straight-forward, uncomplicated family situation, then a Last Will and basic medical directives should serve you well. However, here are the situations in which you should consult a law firm about adding more sophisticated estate planning documents:

- You own enough assets for them to be subjected to state or federal estate tax when you or your spouse dies.
- You own assets like real estate or stocks that have appreciated significantly in value since you purchased them, subjecting your beneficiaries to potentially high capital gains taxes.
- You want to ensure that your beneficiaries are responsible with your legacy by using/spending it in a certain way.
- You want to avoid the entire probate court process.
- You have a child with a disability or other special needs.
- You or your spouse are divorced and/or have children from a previous relationship or marriage.
- You fear that someone may contest your Will by either claiming you were mentally incompetent or were unjustly influenced by another person or circumstance when you wrote it.

If you fit into these categories, you should consult with an attorney.

ESTATE PLANNING BASICS

Your estate includes many types of assets—homes, cars, bank accounts, insurance policies, retirement accounts and investments. You want your entire estate to pass to your heirs according to your wishes and in a quick and inexpensive manner, and you want as much of it to go to your heirs as possible. A well-constructed estate plan can help you accomplish those goals.

To avoid financial losses and confusion for your executor and heirs after your death, organize and identify your assets and affairs now. You will need to identify what assets you hold and where they are located. Following are some of the categories you may want to consider:

- Attorney's and accountant's names and contact information
- Will, trusts, deeds, and other important documents
- Retirement account and pension information
- Insurance policies
- Checking, savings, and money market account information
- Mutual fund information
- Stocks and bonds
- Items locked in safes, safe deposit boxes, and hidden items
- Family heirlooms and family history items

Tell someone, like your executor, where to find this listing of information to assist in administration of your estate. Secure the information in a locked safe or other private location and inform a trusted loved one or your executor where the information is located.

What else will my executor need to administer my estate?

Your executor will need the passwords to all electronic files, numbers and keys to your safe deposit boxes, combination to your safe, pass code to security systems, keys to lock boxes, and so on. Make a list of all password protected, locked, and security protected items you have, including computer accounts, cell phones, pagers, and PDAs.

Are there items I should not keep in my safe deposit box?

Yes. It is possible your executor may not have immediate access to your safe deposit box. Therefore, do not keep your Will or the instructions for your funeral or burial in the safe deposit box.

At a minimum, an estate plan should include a living will and health care power of attorney, a durable financial power of attorney, and a will document. An estate plan could also include various types of trusts. Assets held in trust do not have to pass through probate and may also avoid some estate taxation. There are no federal taxes owed on estates of less than $5,450,000 in 2016 and $5,490,000 in 2017, and the estate tax may disappear

altogether in the future. However, everyone must review their assets in aggregate and formulate a plan for how best to distribute their wealth after their death.

Your Family: Their Rights to Your Estate

I'm afraid that my large estate will be tied up in probate for a long time after my death. Will my family be entitled to any allowances to provide for their living expenses before my estate is settled?

Yes. Your family will be entitled to a family allowance, homestead exemption, and personal property exemption. These allowances are not mutually exclusive - your family can receive all three - and they are in addition to gifts in the Will, the elective share, or an intestate share.

Type of Allowance Purpose Application

Family Allowance: Provides the spouse and minor children with a monetary allowance for living expenses during the estate's administration. Amount varies by state law.

Homestead Allowance: Protects the family home from any claims by the estate's creditors. Some states provide that the spouse and children can live in the home for up to a specific period of time, while others will grant a sum of money to cover housing expenses.

Personal Property Exemption: Protects tangible personal property items for the family's use. Usually applies to items such as furniture, household items, jewelry, and vehicles.

My husband left me only a very small share of his substantial estate in his Will. Do I have any recourse?

Yes. You have the right to renounce, or reject, the Will and file for an "elective share" (provided by statute) of your husband's estate, which is usually one-half or one-third of his estate. This right protects surviving spouses from being disinherited or from being left with minimal gifts. For purposes of determining what property makes up your husband's estate, most states even include any nonprobate transfers in which he retained an ownership interest when he died (e.g., joint bank accounts or joint tenancies). Including nonprobate property prevents a spouse from transferring all of his property into nonprobate transfers, thereby effectively defeating the elective share. If you decide to take your elective share, you must file for it within a certain amount of time (ranging from 4 to 9 months) after your husband's death. To make up your share, all the gifts in the Will are proportionately reduced, so that each beneficiary contributes to your share of the estate.

The amount to which you are entitled varies by state law, so check your state's statutes to find out what the elective share amounts to. Some states condition the amount you receive on the length of your marriage.

I live in a "community property" state. What does that mean with respect to the property that I own?

Community property is defined as all property acquired by you and your spouse while you are married. Property that each of you owned before your marriage and anything that was given to either of you (e.g., by Will) during your marriage is not community property. The community property states are Arizona, California, Idaho, Louisiana, Nebraska, New Mexico, Texas, Washington, and Wisconsin. If you live in one of these states, then you own 50% of your community property, and your spouse owns the other 50%. This means that you can give away only your one-half share of the property, and your spouse can do as he or she pleases with respect to his or her share. For example, if you and your spouse bought a vacation house after you got married, the house is community property. When you die, you can only give away your one-half share in the house, and the beneficiary of that share will then own the house as a tenant in common with your spouse.

I executed a Will a few years ago and now am getting married. What rights will my new spouse have in my estate if I die before changing the Will?

Your spouse has several options depending on the law of your state. First and foremost, he or she can file for his or her elective share and receive up to one-third or one-half of your estate. If your state has a "pretermitted spouse" statute, he or she may be entitled to an intestate share of your estate, which in most states is one-half if you are survived by any descendants. Additionally, your spouse will receive the allowances allowed by law - family, homestead, and exempt personal property.

TIP: The event of a remarriage is a good time to revise your Will, especially if you want your spouse to receive more than what he or she is entitled to under the law.

How will a prenuptial agreement affect my spouse's rights to my estate?

Depending on the terms of the agreement, it can limit, and in some cases even waive, your spouse's right to share in your estate. For the agreement to be valid, it must have been entered into voluntarily and your spouse must have understood the meaning of the agreement (e.g., that he or she was forfeiting any rights to your estate).

My partner and I never married. How can I make sure that he will receive my property when I die?

To protect your partner, you must execute a carefully thought-out estate plan; otherwise, he will be left with nothing. Some ideas are to make lifetime gifts to him, set up joint accounts with him; name him as beneficiary of any trust, life insurance policy, or otherwise; and provide for him in your Will. If you fail to take these important steps, your partner will not receive any of your property, not even under your state's intestate succession laws. Nor will he be entitled to an elective share or any of the family allowances.

TIP: Nonprobate transfers are best in this instance because the transfer on death is automatic. There will be no delay in the event your Will is contested or your estate is tied up in probate.

I never changed my Will after my divorce and it names my ex-spouse as a beneficiary. Will she have any rights to my property when I die?

No. Any gifts or appointments that are in favor of your ex-spouse are invalid. The property that was left to your ex-spouse will pass as if your spouse died before you; it will fall into your residuary clause or pass under intestate succession.

TIP: If you go through a divorce, then you should protect your property by writing a codicil to your Will with respect to the property that was devised to your ex-spouse. Your ex-spouse will not receive the property if you fail to do this, but you might want to control who the beneficiary will be.

What about any property that I left to my ex-spouse's children from her previous marriage? Are those gifts invalid too?

No. The divorce revokes only the gifts to your ex-spouse. Any gifts to her family members are still valid. If you do not want her children to share in your estate, then you need to adjust your Will accordingly.

What if my ex-spouse and I remarried a few years before my death? Is the gift still invalid?

No. In many states, remarriage will revalidate those portions of the Will that were revoked by the divorce. Your spouse will still receive the property that you originally devised to him or her.

I gave birth to a child after executing my Will. Will he be left with nothing?

No. Most states allow a child who is born or adopted after a Will is executed to receive a share in the estate, usually equal to what he would have received under intestacy. Some states do limit this right if the Will indicates a clear intent to disinherit the testator's children, or if the child is provided for by some nonprobate transfer.

Is there a limit on how much I can leave to my minor children?

No. You can leave as much as you like to your children. However, if you choose to leave gifts of over a certain amount, which varies by state law but is typically $2,500, then you need to create a trust for the child or designate a responsible adult (called a "property

guardian") who can manage that property for your child until he or she reaches the age of majority, and at that point the child gains full control over the property.

TIP: Keep in mind that in some states the age of majority is 18, and at that age, many kids are not yet responsible with large sums of money. Consider leaving the property to your child in a trust or custodial account instead, as you can better control, and even delay, his or her receipt of it.

I don't want to leave anything to my oldest child. Can I put something in the Will that states that she is disinherited?

A disinheritance clause in a Will is called a "negative bequest clause," and is ineffective in some states. The best way to make sure that your daughter does not receive anything is to completely dispose of all your belongings. If you die without having disposed of all your belongings, she will have rights to them under intestate distribution.

I had a very close relationship with my mother, and although she provided for me in her Will, she left me only a small share of her substantial estate. She left the remainder of her estate to a friend she hasn't seen in 10 years. What are my rights?

Unfortunately, you cannot claim a larger share in your mother's estate than what she gave you in her Will, unless you can prove that she was mentally incompetent or that there was some type of fraud by her friend. Given that she hasn't seen her in 10 years that is unlikely. The mere fact that the disposition seems unfair is not enough motivation for a court to risk altering your mother's wishes. Thus, you are stuck with what she left to you, and nothing more.

I inherited a generous portion of my friend's estate, but I don't want to accept it because I recently had a judgment entered against me and fear that I may lose it to my creditor. Can I reject the gift?

Yes. You can reject all or part of a gift if you file a valid disclaimer with the court within 9 months after your friend's death. The disclaimer must be in a writing signed by you and must describe the property that you are rejecting. The gift that you reject will then pass under your friend's residuary clause or to her intestate heirs (if she did not have a residuary clause).

Before my father's death, he promised me that he would leave me $20,000 in his Will. When the Will was probated, the gift that he promised me was not included and the

executor is refusing to pay it. Can I sue the estate for the $20,000?

No. The mere fact that your father promised to leave you something in his Will is not sufficient grounds for suing the estate. To win, you would have to prove not only that there was a contract between you and your father that he would leave you the gift (and you would have to show more than the fact that he orally promised the gift), but also that the gift was in exchange for some type of service that you provided him, such as taking care of him during his final illness.

My grandfather's Will devises his artwork to me, but when the executor was inventorying his estate, he learned that my grandfather sold the artwork to an art gallery before he died. Can I get it back from the gallery?

No. The bequest to you is ineffective because your grandfather no longer owned the artwork when he died.

I was named a beneficiary in my boyfriend's Will, but the court found the Will to be invalid because it was signed by only one witness, so now I get nothing. Can I sue the attorney who prepared the Will?

It depends on the law of your state, but most states will allow you to sue the attorney for his negligence. A few states allow only the client to sue the attorney, which leaves you with no recourse because the client is now dead.

My brother left his entire estate to a local charity. Can he do that?

Yes, as long as your state doesn't place any monetary limit on gifts to charities.

Death of a Beneficiary - What Happens to the Gift? In my Will, I devised my car to my granddaughter, Sheila, but she died last month. What happens to the car?

Generally, a gift to a beneficiary is invalid if the beneficiary dies before you. The property will pass under your residuary clause or, if none, under intestacy. However, every state has what is called an "anti-lapse statute," which is designed to save the gift of a beneficiary who dies before you for that beneficiary's descendants. For the statute to apply, the beneficiary must have been related to you in a specified manner (grandchildren are normally included; friends and remote relatives are not) and must have left surviving descendants. Since Sheila is your granddaughter, she will probably fall within the scope of your state's statute, and if she left any surviving descendants (e.g., children or grandchildren), then the gift will pass to them.

TIP: Now would be a good time to change your Will, especially if you are not fond of the person who will receive the property under the anti-lapse statute.

In my Will, I left a gift to "my employees for all their hard work over the years." If one of my employees dies before me, what happens to her share?

Assuming the anti-lapse statute does not apply, her share will pass to the remaining employees. A gift to "my employees," or any other group of people that is not individually named, is called a "class gift." If a member of that particular class dies, then her share passes to the remaining class members (unless the anti-lapse statute applies).

Understand that these anti-lapse rules apply only if the beneficiary dies before you. If you die first, then the beneficiary obviously receives her gift, and when she dies it will pass to her heirs or beneficiaries.

How is this different from my having left the gift to "Mark, Caroline, and Dan, my trusted employees, for all their hard work over the years"?

In this instance, the gift is to three individually-named persons so it is not a class gift. If one of them dies before you, that share will not pass to the other two persons. Instead, it will either pass to her descendants under the anti-lapse statute (if it applies) or it will pass through your estate under your residuary clause or under intestacy.

Summary: Understanding the Anti-Lapse Statute

If a beneficiary dies before you, change your Will to designate a new beneficiary to receive the property. If you do not change your Will, then the gift will either fail, or if there is an anti-lapse statute in effect, will be saved for the descendants of the beneficiary who died. If the beneficiary who died was related to you within the degree required by your state's law and is survived by descendants, the property will pass to those descendants. If the beneficiary who died is not related to you as specified by your state's law, or if he or she did not leave surviving descendants, then the gift fails - it will then pass under your residuary clause (if there is one) or under intestacy.

WILLS

Why a Will Is Important

Without a valid Will you cannot control who will inherit your property upon your death. Should you die intestate (without a Will), your property will be distributed according to state law, which may contravene your personal wishes. A part of your estate may go to the state instead of to family or other loved ones.

With a Will you can determine precisely who will inherit your property. Equally important, you can designate who will administer your estate and who will act as guardian for your minor children should they be without a surviving parent.

As you can see, a Will is an important legal document no matter what your financial circumstances or marital status. There are circumstances that require that you make a Will, as well as execute the other legal documents of a basic estate plan including a living will, Health care power of attorney, and a Durable power of attorney.

Getting married?

A Will isn't usually a priority for newlyweds who don't yet have children or significant assets. But wouldn't your new spouse have an easier time distributing your assets to family members if you addressed your wishes in a valid Last Will? And what if you and your spouse are in the same accident? For instance, if a husband dies at the scene of a car crash while his wife spends time in a coma, all of the couple's assets could go the wife. Then, if the wife dies from the injuries she sustained, the assets would pass on to her parents and siblings. The husband's family would get nothing.

Starting a family?

Most people with young children realize the importance of a Last Will, but just haven't "gotten around to it yet." That's a problem. A basic Last Will is the only way to legally state who will become your child's guardian if you die. Without a Will, the court will decide who gets your children, plain and simple. Think about it: You may love your mother-in-law dearly, but will you rest in peace knowing she's in charge of raising your kids? (That's just one example. For the record, we hold no ill-will towards mothers-in-law.)

Buying a home or establishing a business?

There are certain considerations for homeowners and sole business owners that a Will can address. If you have a particular person to whom you want to "will" your home or business when you die, you'll want to make that clear on a valid Last Will. Otherwise, your state's intestate laws will name beneficiaries among your closest relatives. Perhaps your parents don't need your home (because they have their own), but your little sister would be an ideal candidate. Simplify the probate process for your family by stating that wish in your Last Will.

Need more control?

Nobody has the perfect family situation. When you have no basic Will, then divorce, remarriage, or a partnership without marriage can complicate your wishes and the court's ability to divide your assets fairly. Perhaps you haven't spoken to your father in 20 years and prefer your mother to receive all of your assets. Or you have had a long relationship with someone not legally next-of-kin but who you think deserves a share of your assets.

When a Will is not enough: Will Substitutes

If you're young, in good health, own limited assets, and have a pretty straight-forward, uncomplicated family situation, then a Last Will and basic medical directives should serve you well. However, here are the situations in which you should consult a law firm about adding more sophisticated estate planning documents:

- You own enough assets for them to be subjected to state or federal estate tax when you or your spouse dies.
- You own assets like real estate or stocks that have appreciated significantly in value since you purchased them, subjecting your beneficiaries to potentially high capital gains taxes.
- You want to ensure that your beneficiaries are responsible with your legacy by using/spending it in a certain way.
- You want to avoid the entire probate court process.
- You have a child with a disability or other special needs.
- You or your spouse are divorced and/or have children from a previous relationship or marriage.
- You fear that someone may contest your Will by either claiming you were mentally incompetent or were unjustly influenced by another person or circumstance when you wrote it.

Will Substitutes

A Will substitute (also called "nonprobate transfer") is a method of transferring property outside of your Will with the purpose of avoiding the probate process. These methods help to put your property in the hands of your beneficiaries faster than they would receive it through probate, and they offer a more diversified estate plan than you would have if you executed only a Will. There are many types of Will substitutes, and this section describes the most popular.

Trusts - In General

What is a trust, and what is its purpose?

A trust is a legal instrument where you name a person ("trustee") to hold and manage property for the benefit of another ("beneficiary"). You then transfer property into the trust by changing its ownership so that it is owned in the name of the trustee instead of in your name. It is a versatile estate-planning tool and is a commonly-used alternative to a Will for giving away your property, because it allows you to control the circumstances under which the beneficiaries receive the trust's property. For example, you can set up a trust for your minor children and state that they are not to receive the property until they are age 30

(whereas under a general property guardianship they would receive it when they reached the age of majority). You can put your son's inheritance in trust to protect it from the claims of his creditors or from his own irresponsibility with money. You can even place your property in trust and name yourself as beneficiary in the event you become unable to manage your own financial affairs.

The trust cannot be used for an illegal purpose or one that is contrary to public policy.

I already have a Will. Why should I create a trust?

A trust allows you to do many things that you can't accomplish with a Will. You can protect assets from creditors, possibly minimize the effects of estate taxes, or provide for the support and maintenance of beneficiaries over a period of time. For example, if you leave money to your child under your Will, he will receive it when you die. But if you put the money in a trust and name your son as beneficiary, you can control the amount he receives on a regular basis and can prevent him from squandering away large sums of money by spreading the payments out over a period of time.

TIP: It is a good idea to have a Will even if you decide to create a trust, because the Will can accomplish things that cannot be done with a trust (e.g., naming a guardian or an executor). Also, if you die owning any property that was not transferred into a trust, then it can pass under the Will (usually through a specific provision or under the residuary clause) and avoid any intestacy.

What types of trusts are there?

There are too many types to name here, but the most common are:

Testamentary: A testamentary trust is set up through your Will and becomes effective on your death. Basically, you designate certain property in your Will to be held in trust after your death. The trust can be revoked or modified while you are alive, but becomes irrevocable after your death. It passes through probate because it is created by your Will.

Living: A living trust is created and is effective while you are alive, and may or may not be revoked or modified. It is usually not subject to probate.

Discretionary: A discretionary trust gives the trustee power to decide how much and when to pay out to a beneficiary. The trust's property is protected from the beneficiary's creditors until the trustee decides to pay out any money, but then he must pay it directly to the beneficiary's creditors.

Support: A support trust requires the trustee to disburse payments to (or on behalf of) the beneficiary as is necessary to provide for his or her support. The right to the payments cannot be assigned to others and is not subject to the beneficiary's creditors.

Honorary: This is a trust that does not name a beneficiary and the trustee is "on his/her honor" to carry out his/her duties. It is usually established to provide for the care of a pet or plot of land.

Charitable: A charitable trust is in favor of a specific charity or group of unnamed beneficiaries. It must be created to accomplish a charitable purpose that benefits the public.

Q-Tip: This is a "Qualified Terminable Interest Property Trust," and provides that the income from the trust is to be paid to your spouse during his or her life and then is to be distributed to the beneficiary when he or she dies. This type of trust delays paying estate taxes until your spouse dies.

Who should I name as trustee?

The creator of a living trust generally names himself as the only trustee so he can have complete control over its management. However, you can name anyone that you want as long as the person is competent. Be sure the person you select is someone that you trust with your personal affairs. Common designations are in favor of family members, though some people choose to hire a professional trustee, such as a bank (which usually charges a fee).

I forgot to name a trustee. Is my trust invalid?

No. If you forgot to name a trustee, or if the one that you named is unable or unwilling to serve, the court will appoint one for you and the trust remains valid.

I am named trustee of a trust. What do I need to do?

Your duty is to administer the trust in good faith and as a reasonably prudent person. You must act in the best interests of the beneficiaries and according to the directions set forth in the trust instrument. You are required to protect and preserve the trust's assets, invest them in a manner that will increase their value, and make timely distributions to the beneficiaries. You may not mix the trust's assets with your own, loan to or borrow money from the trust, or use your position as trustee in an improper manner.

TIP: The administration of a trust can be a time-consuming task. If you feel you need help, you can hire a professional (i.e., attorney or accountant) to perform some of the duties, but you cannot delegate the entire administration of the trust; you can delegate only some of the functions.

Does a named trustee have to serve?

No. The trustee can refuse the appointment as long as he hasn't assumed any of the trustee's duties. If the trustee accepts the appointment but subsequently decides that he or she no longer wants the responsibility, he or she can resign with the court's approval.

When can a trustee be removed from office?

The court will remove a trustee from office whenever it feels that the trustee could jeopardize the trust. Common grounds for removal are commission of a serious breach of trust (e.g., he or she failed to properly invest the trust's assets), inability to carry out his or her responsibilities (e.g., he or she is imprisoned), or he or she does not get along with the beneficiaries.

What issues should I consider when designating beneficiaries?

You can select as beneficiary any person or organization capable of taking title to property (charities and unborn individuals are acceptable beneficiaries; pets and unincorporated associations are not). The beneficiary does not have to identify by name, but must be capable of being identified when it is time to distribute the interest. For example, if you want to leave property in trust for your sister's future children, you can do so even if you do not name them because it is possible to determine who the children are when it is time to distribute their interests.

Can I be a beneficiary of a trust that I create? Why would I bother doing that?

Yes. But you cannot be the only beneficiary and the only trustee. In that case, the title is said to "merge" and there really is no trust. One reason for placing your assets in trust for yourself is so you can appoint a co-trustee who will manage your affairs in the event you become sick and unable to do so yourself. In that event, the trustee can invest your assets, sell them if necessary, and make regular interest payments to you or on your behalf.

Can a beneficiary transfer his interest in the trust to another person?

Yes, unless the trust contains a "spendthrift clause." A spendthrift clause prohibits the beneficiary from transferring his interest to another, and it also protects his interest from the claims of his creditors (unless the creditor is a dependent or the government). However, once the property is distributed to the beneficiary it loses its protection and the beneficiary can do whatever he wants with it (and his creditors can get it).

TIP: If the beneficiary of your trust is someone who is incapable of handling his or her financial affairs, is irresponsible with money, or has a lot of debt, a spendthrift clause is crucial. Without one, the trust property could disappear quickly.

If your situation matches one of the scenarios above, consult with an attorney. A network of online lawyers that provide legal advice and other online services for a fixed fee can be found at: http://www.directlaw.us.

Will Details: Who should make a Will?

Every adult should have an up-to-date Last Will and Testament. The only qualifications are that you be of legal age and sound mind. Should you have a history of serious mental disorders, it may be wise to consult with a qualified medical practitioner just prior to preparing your Will. This will help establish your competency and be useful should your Will later be contested on the grounds of mental incompetency.

It is unnecessary to be a citizen of the United States to prepare a Will. Make the Will in the state where you reside, although Wills made elsewhere are also valid.

If married, both you and your spouse should prepare Wills. This is true even if marital assets are primarily in the name of one spouse. Ordinarily, spouses designate each other beneficiaries. Such Wills are “reciprocal” Wills. Spouses using reciprocal Wills should also designate an alternative or contingent beneficiary.

Minors cannot make Wills, as they are not deemed competent. Property owned by a minor is held “in trust” by a parent or other designated guardian. The parent or guardian should therefore consider the testamentary wishes of a minor whose assets they control.

The Two Basic Types of Wills:

Written Wills are typed or printed out on paper, dated, and signed by the person making the Will in front of witnesses. Four states—California, Maine, Michigan and Wisconsin—now have optional state-authorized, pre-printed Will forms known as statutory Wills. Any written but unwitnessed Will is considered unreliable and rarely stands up in court. Some states allow Holographic Wills, which are entirely handwritten by the person making the Will. Holographic Wills do not have to be witnessed to be valid, but their validity can still be difficult to prove in court if challenged.

A Living will is a written Will but differs because it has no effect after your death. Instead, it indicates at what point you wish to terminate medical attempts to prolong your life.

Nuncupative Wills are unwritten or oral Wills. Although this Will is usually made before witnesses, it is valid only when the testator is in immediate peril of dying. You may not leave property valued at more than $1000 in this Will.

Videotaped or audiotape Wills are not recognized in any state.

How long is a Will valid?

Once prepared, your Will is valid until revoked, which may occur in one of three ways:

- By cancellation or destruction
- By making a new Will
- By operation of law, such as marriage

Other than under one of these circumstances, your Will remains valid for an unlimited time period.

When is it necessary to prepare a new Will?

A new Will should be prepared under any of the following circumstances:

Change in financial condition. A significant change in financial condition may necessitate a new Will, as it will enable you to distribute your assets differently.

Family additions. The birth of a child may necessitate a new Will, as your existing Will may not properly provide for this child.

Moving to another state. Prepare a new Will when you move to a new state, even if there are no important personal or financial changes. A newly prepared Will also helps establish your new state as your legal domicile.

Marriage. In some states a marriage automatically revokes prior Wills, so it is necessary to prepare a new Will upon marrying.

Divorce. Unlike marriage, a divorce does not automatically revoke prior Wills. However, in most states, your former spouse will not continue as a named beneficiary. If you desire to maintain bequests made to a former spouse you must prepare a new Will.

These are only a few of many circumstances that would prompt you to revise your Will. There may be many other situations, such as a child reaching adulthood, changes in personal relationships with family members or friends, or changes in health. It is a good idea to review your Will at least every year, so it is always up to date.

How to revise or change your Will?

Never attempt to revise or change a Will by altering an existing Will. There are only two ways to revise an existing Will:

A codicil. A codicil is an amendment to a Will. It is recommended when you have only minor changes in mind. A codicil must be prepared, signed and witnessed in precisely the same manner as a Will. When drafting the codicil, it is important to state the changes so there are no ambiguities or inconsistencies between the Will and codicil.

A new Will. A new Will automatically revokes prior Wills and codicils. You should revoke prior Wills by formal cancellation so that your prior Will is not mistakenly considered your most recent Will. You can cancel a former Will by actual destruction or by writing across its face the words “revoked” or a similar term that shows your intent to revoke.

Remember, you may not add words or provisions, or change, delete, strike-out or erase your Will or codicil once prepared. You can, however, add more codicils.

Changing or Revoking Your Will

Why should I change my Will?

You should review and change your Will on a regular basis in order to keep it current. Many people these days make Wills, but not all of them realize that it needs to be modified whenever something changes in their life -- most often with their finances or relationships. It is wise to update or revoke your Will in light of any new circumstances. That way your family and friends avoid any unnecessary problems when your estate is being settled.

When should I change my Will?

Other than a simple change of mind, there are many events that may prompt you to change your Will. Common reasons for changing a Will are:

- Life-changing events
- Marriage
- Divorce
- Birth or adoption of a child
- Relocation to a new state or country (you should change the Will so it conforms to that region's laws to avoid delays in probating it)
- Changes in your financial situation or assets
- Inheritance of a large amount of money or other asset
- Purchase or acquisition of a new home or car, or other asset
- Sale or destruction of an asset that was included in your Will
- Purchase or sale of a business
- Changes in your original beneficiaries
- Death of a spouse or other beneficiary
- Relationship with a beneficiary takes a turn for the worse
- Desire to include new beneficiaries

In the event of a divorce, the law automatically revokes any provisions in your Will that favor your ex-spouse. Regardless, you still need to update your Will because if you do not redirect the property originally devised to your ex-spouse to another beneficiary, then that property will either fall into the residuary clause, or if there is none, it will pass to your intestate heirs.

How can I change my Will?

You can change your Will in one of two ways. You can revoke your current Will and write a new one. Or you can amend your existing Will by creating a codicil. A codicil is a formal supplement to your Will and must conform to the same requirements for executing a Will (must be written and signed by you and your witnesses).

TIP: If you execute a codicil to your Will, make sure that you store it with your Will. If the changes in your codicil are extensive, you should consider revoking the old Will and starting

over with a new one. This will avoid any confusion when it is offered for probate and will insure that you don't make any mistakes.

How do I revoke my Will?

If you revoke your Will, it is legally dead - as if you never created it. You can revoke your Will by a later writing (e.g., a new Will or codicil that is totally inconsistent with your previous Will or that includes a statement that you intend to revoke your previous Will) or by physically destroying it (burning, canceling, tearing, or obliterating it). If you physically destroy your Will, make sure you destroy the entire Will; otherwise you risk an ineffective revocation. For example, if you want to write "void" on your Will, write it across the face of every page as opposed to just the first page.

TIP: Make sure that your new Will includes a statement indicating your intent to revoke the old Will. It is usually sufficient to state something to effect that you "revoke all prior Wills and codicils"; this will protect your intentions in the event that you forgot to destroy any originals or copies of prior Wills or codicils.

My attorney keeps my Will in his office for safekeeping. Can I call him and ask him to rip it up since I want to create a new one?

You can have your attorney destroy the Will for you, but he must do it in your presence. If you are on the phone with him when he does it, the revocation is ineffective and the Will is still valid.

What happens if my revocation is ineffective?

If you do not properly revoke your old Will, it remains alive and it will be admitted to probate along with your new Will. In that event, the court will try to dispose of your estate pursuant to the terms of both Wills. If there is an inconsistency between the two, the terms of the most recent will take precedence. All the remaining provisions of the old Will are still given effect, provided they do not conflict with the new Will!

EXAMPLE: Assume you have a Will that, among other gifts, devises your car to your mother and your home to your sister. You later write a new Will that devises the car to your father, but you don't mention the home and you never revoke the old Will. Both Wills are valid and both will be probated. Because there is an inconsistency between the two Wills with respect to who gets your car, the most recent Will controls and it passes to your father. The home will pass to your sister under the first Will even if you didn't want her to receive it.

Tip: If your new Will is completely inconsistent with the prior Will, then you don't need to worry about this happening - the prior Will is considered to be revoked. This makes sense if you think about it - the second Will controls any inconsistencies between the two Wills, so if the two Wills are entirely inconsistent, then the second one controls, revoking the prior Will. However, it's best to err on side of caution and destroy any unwanted Wills.

Writing a new Will seems like too much work. Can I just cross out the provision I don't like and insert a new one on my existing Will?

This is called a "partial revocation by physical act," and although it is permitted in some states, it's not recommended. What if you have so many changes that you are left with a Will with a lot of crossed-out provisions? How is the court to know whether you intended to revoke the entire Will or just portions of it? And what if your new clauses are hard to read or understand? At a minimum, you should make the change by executing a codicil to the Will. And if your changes are significant, then you would do your beneficiaries a favor by rewriting your Will. It is more time-consuming but you ensure that there will be no problems when the Will is probated.

After having executed my Will, I realized that I forgot to give away my new computer. Can I just add that clause to the end of the Will?

No. This type of change will be ineffective because it was not present when the Will was executed. If you add anything new to the Will, you must re-execute it for the new material to be valid. In other words, it must again be signed by you and your witnesses.

My mother used to keep her Will in her desk drawer, but after her death we could not find it there. How can we admit its contents to probate?

You can't. If the Will can't be found and it was last seen in your mother's possession, then the court will assume that she revoked it. Also, if it is found in a damaged condition (e.g., torn into pieces), it is presumed that she damaged it with the intent to revoke it; so again, it will be invalid. However, if you can prove that the Will was not revoked by your mother, then the court will accept proof of the Will's contents by carbon copy or photocopy, or by the testimony of a person who knew its contents. One way to prove this is if you have evidence that a third party (perhaps someone who was left out of the Will) had access to the Will and destroyed or damaged it.

I revoked my 2000 Will through a clause in the Will that I executed in 2005. Now I have decided to revoke my 2005 Will because I want to reinstate the terms of the 2000 Will. Can I just tear up the 2005 Will and do nothing more?

No. The 2000 Will was revoked and remains revoked. You must take affirmative action if you want to revive its terms. You have three options. You can create a new Will that contains the same terms as the 2000 Will. You can properly re-execute the 2000 Will (re-date it and have it signed by you and your witnesses). Or you can execute a codicil that states your intent to revive the 2000 Will. And be sure to completely revoke the 2005 Will!

A few years ago, I executed a codicil to my Will that changed my executor. I have now decided that I feel more comfortable with my original choice, so I want to revoke the codicil. Does this revalidate my original designation?

Yes. If you create a codicil to your Will and then later revoke the codicil, the Will is still valid and the clauses in the Will that were changed by the codicil now take their original effect.

I executed a Will a few years ago, and then subsequently executed a codicil that amended a portion of the Will. As I am reviewing my documents, I realized that I forgot to sign the Will. Is it valid?

Standing alone, the Will is invalid because without your signature it is not properly executed. However, if your codicil was properly executed (in writing and signed by you and two witnesses), then it validates your previously invalid Will as of the date of the codicil. Therefore, your Will is considered to be valid.

What property does not pass under a Will?

A Will does not dispose of property that would pass to another by contract or by operation of law. Common examples are:

- **Jointly owned property.** Where you own a home jointly with a spouse or have a joint bank account, or own stocks or bonds jointly, the jointly owned property will automatically pass to the other joint owner. This also applies to community property.
- **Property under contract.** If you had an agreement to sell your home and died before conveyance, the buyer could enforce the contract and the house would not become part of the estate (although the proceeds of sale would).
- **Life insurance proceeds.** These funds are paid directly to the named beneficiary.
- **Living trust assets.** Property held in a living trust automatically bypasses probate - that is one reason living trusts are so popular.

Disposal of Property During Your Lifetime: People often believe that once they leave property under a Will they lose the right to sell or otherwise dispose of the property during their lifetime. This is not so. You fully retain the right to do whatever you choose with your property, notwithstanding its mention in your Will. For example, the provision “I leave to my brother Jack my 1995 Cadillac Sedan,” only means that your brother Jack inherits your 1995 Cadillac Sedan if you own it at the time of your death. If you traded the 1995 Cadillac for a 2004 Mercedes, your brother would not receive the Mercedes in its place.

Obviously, if your Will includes many bequests that are no longer possible because you no longer have the items, it is time to prepare a new Will to dispose of the assets you have.

Appointing a Personal Representative

You must name a personal representative, or executor, for your estate and authorize your personal representative to probate your estate and carry out your Will.

Typically, a spouse, relative, or close friend serves as personal representative, as the duties are easy and your personal representative will retain an attorney to process the probate forms. The primary concern in selecting a personal representative is that he or she be reliable and trustworthy in carrying out your wishes.

Some states require the personal representative to be a permanent resident of that state. Others allow the appointment of nonresidents if they are relatives of the testator or if they post surety on their bond. Therefore, you should not appoint a nonresident of your state as your personal representative without first checking your state's applicable laws. Always check in advance with your proposed personal representative, who must be of legal age, to be certain he or she will serve. Always name an alternate personal representative in the event the named personal representative shall not or cannot serve.

Naming a Guardian for Your Children

If you have minor children or dependents, name a guardian to care for the children or dependents if you leave them without another parent. Since a guardian takes the place of a parent, you will want to name an individual who can offer the best care for your children or dependents. This will usually be a close relative willing to accept the responsibility. As with your personal representative you should name an alternate guardian if the primary guardian cannot serve.

Making Special Bequests in Your Will

After naming your personal representative and guardian, you will bequeath your property under the Will.

You will start with special bequests (or "specific bequests"), wherein you leave assets to certain beneficiaries. Consider this bequest carefully. Are there family heirlooms that would have special meaning to someone? Should you leave a war souvenir to an old army buddy? If you are a mother, wouldn't it make sense to leave your jewelry to your daughters? You see the idea. A special gift may not have monetary importance but may have personal significance.

Bequests should always be clear, complete, and specific – who is to receive what property. Examples:

I give my 1999 Chevrolet Caprice to my son, Harry Smith.

Or

I bequeath to the Second Baptist Church of Center City $10,000 to use in any manner the church deems proper.

Your special bequest should also indicate whether the property is to be gifted subject to mortgages or encumbrances against it, or whether it is to be gifted free and clear, with any debts against the property paid from your general estate.

Examples:

I leave to my daughter, Mary Smith, my home at 5 Maple Street, Center City, subject to all mortgages.

Or

I leave to my dear friend, Harry Carlson, my 1996 Chris Craft Sedan Cruiser, free of all encumbrances.

Forgiving Debts

Under a Will you may release a person from obligation to repay money owed you. If a person whom you release from a debt is a beneficiary, state whether he or she is to receive his or her full bequest or whether the debt is to be deducted.

Example: I leave $100,000 to my nephew John Smith, less such balance on the $20,000 loan he then owes me.

Be clear on this point, particularly between parents and children. If you gave your son $50,000 for a down payment on a home, was this a gift or a loan? If it was a loan, should it be deducted from whatever your son may receive under your Will?

Disinheritance provisions

You may wish to disinherit a child or spouse.

In most states you can lawfully disinherit a child; however, you must specifically mention the child and your intention to disinherit. If you omit mention of a child, the law may presume that you forgot the child and entitles the child to his or her statutory share as if you died without a Will. Proper language to disinherit may read:

Since I have not heard from my son John Smith in over five years, I leave him nothing.

Or

I recognize my daughter Mary Smith is financially secure, and therefore leave her nothing.

In many states it is impossible to completely disinherit a spouse, as the spouse is entitled to at least the same share as if you died without a Will. If you intend to disinherit your spouse but you are uncertain of the laws in your state, you may use this language as an example: I leave to my wife, Ellen, absolutely nothing, or, if unlawful to do so, such minimum share of my estate as required by state law.

Remember, it is often wise to leave your children and spouse some bequest to avoid a contest over your Will.

Residuary Bequests

The “residuary” clause names the “residuary beneficiary”—the person or organization who will receive (other than bequests) the remainder of your estate. You may wish to avoid bequests altogether, in which case your Will shall only contain a residuary bequest.

If your Will contains no bequests, the residuary clause may read: I leave all my property to my wife, Hilda Jones.

If there are bequests it would read: I leave all the rest of my property to my wife, Hilda Jones.

Wills frequently state the residuary clause more completely, as:

I leave all the rest and residue of my estate, including both real estate and personal property, wheresoever located, to my wife, Hilda Jones.

Another function of the Residuary Clause is to act as a “safety net.” Since it distributes any portion of your estate not accounted for by bequests, anything you have forgotten to include will be accounted for under your Will. Suppose you forgot to include a valuable piece of jewelry or you came into possession of a valuable painting long after you had prepared your Will. The Residuary Clause prevents those items from falling through the cracks in your Will.

Contingent Beneficiaries

It is possible that a named beneficiary may predecease you, in which event you should name a contingent or alternate beneficiary.

For example:

I leave all my property to my wife Hilda Jones, but if she shall predecease me, I leave said property to The Second Baptist Church of Center City.

Or

I leave all my property of every nature and description to my wife, Hilda, but if she shall not survive me, I leave said property to my surviving children in equal shares.

Theoretically, there is no limit to how many levels of alternate beneficiaries you may name. Alternate beneficiaries may effectively create different plans for distributing your estate. You may for example, feel obligated to leave everything to a specific person - but in the event that the person predeceases you, you may then feel free to make specific bequests to other relatives, close friends, or even to charities. Remember, if you name an alternate beneficiary for a child or other dependent, that alternate does not have to be another child or dependent. Be sure to specify the share each beneficiary is to receive.

Consider what should occur if you leave property to your children but a child dies before you do. Should that deceased child's share be distributed among your other children, or would you prefer that child's share to be distributed among his or her children (your grandchildren)?

There is no one correct answer to this, but here are alternative ways of expressing your wishes:

I leave all my property to my children who may survive me, in equal shares. This is called a "per capita" bequest.

Or

I leave all my property in equal shares to my children, but if any child shall predecease me, I leave that child's share to his [or her] children equally.

This is called a "per stirpes" bequest, or inheritance by rights of representation.

Current Status of the Estate Tax Law

If you are married and your gross estate (including living trust property) exceeds $5,450,000 in 2016 and $5,490,000 in 2017, consult an attorney or tax specialist.

As of January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption to the surviving spouse. This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election.

State Death Tax Credit: In computing the estate tax applicable to a decedent, a decedent was entitled to a credit for state death taxes paid. Many states collect their estate and inheritance tax based on the credit permitted under the Internal Revenue Code for state death taxes. Under the Tax Relief Reconciliation Act of 2001, the credit for state death taxes is gradually eliminated. After the year 2004, you may no longer take a credit for state death taxes on your federal estate tax return, although it will be allowed as a deduction. This change to the estate tax law results in a loss of revenue for many states. As a result, many states have amended their inheritance tax laws to assess an inheritance tax based on the credit for state death taxes as permitted under the Internal Revenue Code, prior to the enactment of the Tax Relief Reconciliation Act.

Carryover Basis: Under current law, property passing at death receives a step-up in basis to the fair market value as of the decedent's death. This results in a reduction in the capital gains tax owed upon the subsequent sale of the property (at least regarding property that has increased in value since the date that the decedent purchased same).

Wills are the cornerstone of estate planning, but they aren't the only tools to consider. We're often asked what the difference is between Wills vs. Trusts. The truth is: one does not replace the other. They're often both needed in conjunction with one another.

Wills between married couples at their most basic form are referred to as simple wills. Estate planning attorneys have also nicknamed them “I love you” wills. That’s because we often see them as more of a gesture of love than an advanced estate planning tool. A simple will basically states, “When I die, I leave everything to my wife. Or if she dies first, she’ll leave everything to me.” After all, that’s what marriage is: an equal partnership, right? Not necessarily (at least when it comes to smart estate planning).

Contesting the Will

What does it mean to contest a Will?

A Will contest is a challenge to a Will, usually initiated by a family member or a beneficiary who feels slighted by the testator's choice of property distribution. Valid grounds for a Will contest include claims that it was improperly executed (e.g., the testator did not sign it), the testator lacked testamentary capacity (e.g., he did not understand what he was doing), it contains a mistake, or it is the result of fraud, undue influence, duress, or insane delusion.

What happens if a challenge to a Will is successful?

It depends on the reason for the Will contest. If the Will is found to be invalid because it does not conform to the state's requirements or because the testator was not mentally competent when it was made, then the property will pass under intestacy as if the Will never existed. But sometimes only part of the Will is found to be invalid. For example, if a beneficiary is found to have coerced the testator into leaving her part of his estate, then only the gift to that beneficiary is invalid and the property falls into the residuary estate (if there is one) or under intestacy; the rest of the Will remains valid.

I don't want my family to fight over my Will. Can I insert something in my Will that causes anyone who challenges the Will to lose his gift?

Yes. This is called a "no-contest clause," and has the effect of causing the beneficiary to forfeit his gift if he challenges the Will. But beware - many states will allow the beneficiary to challenge the Will and still keep his gift as long as his challenge is based on probable cause (i.e., an allegation of fraud or mistake).

I left my Will on my desk and my family saw it. They are not happy with how I divided my belongings and want to formally contest the Will in court. Can they do that?

No. Your Will has no effect until you die. Therefore, your family (and any other named beneficiaries) has no interest in it until then. They will have to wait until the Will is probated on your death before they can contest any of the provisions. And they may have problems contesting it on your death if they have no valid grounds to do so - they cannot contest it merely because they are unhappy with the distribution.

I'm not happy with the way my mother distributed her estate. Can I contest the Will?

Not if your mere dissatisfaction is the sole ground for contesting it. A court will not entertain a Will contest unless it is based on an assertion of improper execution, lack of testamentary capacity or insane delusion, lack of knowledge of the Will's contents by the testator, mistake, or some type of wrongdoing by a third party (such as fraud or undue influence).

My friend's Will left her diamond ring to her "good friend, Mary." I believe that she meant me, but she has another friend Mary who claims that she is entitled to the ring. If I contest the Will, who will win?

It depends on how persuasive you are in proving to the court that your friend intended that the ring belong to you. The Will is ambiguous in that it doesn't specify which Mary your friend meant, so the court will consider any evidence as to whom she meant, including anything she may have said to you or anyone else regarding the ring.

My daughter suspects that her children unduly influenced her husband to leave his entire estate to them, attempting to disinherit her. She is too upset to take the matter to court. Can I do it for her?

No. Only a person who has a financial interest in the estate can file a Will contest. This usually means only the persons named in the Will and anyone who would have inherited if the person had died without a Will. Since you do not qualify under either scenario (you are not named in the Will and would not have been an intestate heir), you cannot file the contest for her. She will have to do it herself. Note that if she chooses not to file the contest she can still renounce the Will and claim her elective share.

There is a time limit for filing a Will contest, which varies by state law. If she is uncertain as to whether she wants to take action, she should at least research the state's specific law to find out how long she has to make up her mind.

Wills vs. Living Trusts

Now let’s look at the consideration of Wills vs. Trusts. If you own more than $500,000 in assets, simply leaving your spouse everything in a Will can have undesirable consequences. Couples who own a home and have some retirement savings and other investments built up will easily surpass this threshold. That’s when trusts become useful. While a Will simply lays out distribution of property wishes for after you pass away, trusts can help ensure that:

- Certain taxes can be lessened or avoided altogether.
- Probate on certain assets is avoided.
- Estate details can be kept out of public record.

- A plan for managing assets can be laid out for incapacitation (not just after death).
- Very specific restrictions can be placed on how the assets are distributed, even after you're gone.

While setting up trusts has an upfront cost, that price is much smaller than the price your family could potentially pay by relying on a simple Will alone. Here are some specific considerations when it comes to Wills vs. Trusts:

It is estimated that probate expenses (attorney and court fees) can cost up to 5 percent of an estate. For an estate worth $2 million, that could be up to $100,000. The cost of administering a trust this size (bypassing probate) will cost about half that amount.

Signing Your Will

You and your two (or three) witnesses must sign your Will in the presence of one another. It is always a good idea to have all parties sign in the presence of a Notary Public, even if not required by law. If you choose to have the Will notarized, you and the witnesses will also need to sign a Self-Proving Affidavit, acknowledged by the Notary. No one should leave until the Will is both signed and witnessed.

You should initial each page in the lower right hand corner. This helps avoid anyone tampering with your Will by substituting pages.

Sign the Will as you would any other legal document, but it is preferable that you sign your name as it appears on the first page.

Witnesses to Your Will

To ensure the validity of your Will have it properly witnessed by at least two witnesses. We recommend that you use three witnesses in the event a witness becomes disqualified.

Witnesses must be disinterested parties and therefore cannot be named in the Will as a beneficiary, personal representative or guardian. Never allow a relative to sign as a witness. Witnesses should also be of age and reside locally, if a question should arise concerning the validity of the Will.

Some Wills may be able to be notarized by having the Testator and witnesses sign a Self-Proving Affidavit. This helps establish that you are the signatory of the Will and that the identities of the witnesses were verified so there are no questions about the identity of the persons who signed, or witnessed, the Will.

Safekeeping Your Will and Other Estate Planning Documents

Sign the Will and then make copies of the original. Keep the signed original of your Will in a safe place within the home. Make certain that one or two family members know of its location.

A copy may be stored in a safe deposit box. We do not recommend storing the original in a safe deposit box because safe deposit boxes are often sealed by taxing authorities upon death, and so it could be difficult for your representatives to gain quick access to your Will.

Another copy should be left with whomever you designate as personal representative of your estate. Yet another copy should be retained by your attorney.

In some states you may be able to deposit a copy of your Will with the Probate Court. This is recommended in these jurisdictions.

Probate and Estate Administration

What are "probate" and "estate administration"?

In a nutshell, probate is the winding up of your affairs after you die. It is the process of determining the validity of your Will or establishing the identity of your intestate heirs. A personal representative is appointed to administer your estate. To "administer" your estate means to act on your behalf and manage your estate, collect your assets, pay your debts, and distribute your remaining property to your beneficiaries or heirs.

How long does the probate process take?

It generally takes a few months to a year, but it depends on the size of your estate and whether there are any complications (such as a relative contesting the Will). The process usually requires court supervision in order to protect your family, beneficiaries, and creditors, so it may take a long time if your estate is large.

TIP: To avoid making your beneficiaries wait too long before receiving their inheritances, you should consider gifting the property through nonprobate alternatives (e.g., trusts, joint bank accounts, and lifetime gifts). Also, remember that your spouse and minor children are entitled to statutory allowances to provide for their living expenses while your estate is in probate.

What is a "personal representative"?

A personal representative is the person responsible for managing your estate after you die and making sure that your wishes are carried out. He or she usually acts as a liaison between your estate and the court, your heirs/beneficiaries, and your creditors. It is someone who is designated by you in your Will (called an "executor"), or appointed by the court if you did not name one or if you have no Will (called an "administrator"). The person must usually be of legal age, competent, and a U.S. citizen. He or she cannot be a convicted felon.

TIP: Before you name an executor in your Will, make sure that person will accept the appointment on your death. Also, you should name a successor executor in case the person of your choice is unable or unwilling to serve.

What happens to my Will when I die?

When you die, your Will is offered to the court for probate. This is usually done by your personal representative or someone who has possession of the Will, and must usually occur within a certain amount of time after your death. The court then verifies the Will's validity, which sometimes requires the testimony of witnesses who either verify that the signatures on the Will are yours and theirs or that the handwriting is yours (this testimony is not necessary if the Will is accompanied by a self-proving affidavit). If all is compliant, the court declares the Will valid and the process of settling your estate begins.

What if the court rules that my Will is not valid?

Sometimes the court may determine that the Will is invalid. This might happen if it was not signed by you, if it is not signed by the appropriate number of witnesses, or if it is the result of someone else's coercion. If it is declared invalid, the Will is denied probate and your property passes as if you had no Will to begin with, pursuant to your state's intestate succession statutes.

If I create a Will in one state, but die in another, is the Will still valid?

Yes. The Will can be probated in the state in which you die as long as it is valid pursuant to the laws of either the state in which it was created or the state in which you lived before your death. For example, if you executed your Will when you lived in Minnesota, but you lived in Illinois when you died, then your Will is valid in Illinois - even if it does not conform to Illinois law - as long as it was valid in Minnesota when you created it. Similarly, if your Will was not valid in Minnesota when you created it, but is valid under Illinois law, then it is admissible to probate in Illinois. Note that this does not apply to oral Wills - they are valid only in the state in which they were created.

I am named executor in my mother's Will. What are my responsibilities?

As executor of your mother's estate, it is your duty to perform the duties required of executors by law and to make sure that the wishes in your mother's Will are carried out.

Generally, you are responsible for performing the following tasks with respect to your mother's estate:

- Present her Will to the probate court.
- Make a list of all her probate assets (called an "inventory") and submit it to the court.
- Publish a notice of her death in a local newspaper (to provide notice to her creditors that she has died).
- Collect all her assets and sell those that are needed to pay any claims against the estate (if there is not enough money to pay all debts).
- Pay all her debts (i.e., funeral expenses, estate taxes, hospital bills).
- Pay any allowances to her husband or minor children.
- Distribute any remaining assets to the people named in her Will as beneficiaries.

TIP: These duties can seem overwhelming and you can certainly hire an attorney to assist you. But keep in mind that any fees will be charged to the estate.

Do I get paid for my services as an executor?

Yes. You are entitled to payment out of the estate. Your fee will either be set forth in the terms of the Will or by state law (usually a percentage of the estate's value). If the decedent is a family member, you might want to consider waiving your fee.

My mother left a Will but did not name an executor. Who will be appointed?

It depends on your state's particular statute, but the surviving spouse usually is first in the order of priority. If there is no surviving spouse, the court might appoint a child, parent, or other beneficiary in the Will.

The laws of the state where I live require that my executor be "bonded." What does that mean?

The bond serves as a type of insurance that your estate is managed in a way that is not detrimental to the interests of your beneficiaries. The executor must act in good faith in managing your assets, and if he or she acts in any way which results in harm to a beneficiary, the bonding agency will compensate the beneficiary.

SIDEBAR: Most states require executors to be bonded. However, if you trust that the person you name will act according to your wishes and in the best interest of your beneficiaries, then you can insert a clause in your Will requesting that the court waive the bonding requirement.

My mother left so many bills when she died that the assets in her estate are not sufficient to pay all the bills and still make all the gifts. As her executor, what do I do?

You will have to apply some of the gifts towards her debts, which might involve selling some items. This is referred to as the process of "abatement," which means that payment of the debts is made out of the property that is left to the beneficiaries or heirs. Property generally abates in the following order of priority:

- First, any property passing by intestate succession is used.
- Second, any property that falls in the residuary estate is used.
- Third, any general gifts (gifts of cash) are used.
- Finally, any specific gifts (gifts of a specific item of property) are used.

You begin in the first category and if that property is exhausted, then you continue onto the next category, and so on until all the debts are paid. If you only need part of the property in one category, then the property in that category abates on a pro rata basis. This means that all of the beneficiaries in that category contribute towards the debts. Any remaining property after the debts are paid is then distributed to the appropriate beneficiary or heir.

EXAMPLE: Assume your mother dies with debts totaling $250,000 and leaves an estate valued at $500,000, that contains the following items of property:

> $100,000 cash left to her granddaughter. This is a general gift.
> Home worth $200,000 left to her mother. This is a specific gift.
> Boat worth $75,000 left to her son. This is a specific gift.
> Residue worth $125,000 left to her neighbor. This is the residuary gift.

First, you start with the residuary estate because there is no intestate property. The residuary estate is worth $125,000, leaving $125,000 in debt. Next, you move onto the general gifts. This is only $100,000, leaving $25,000 in debt. Next, you move on to the specific gifts. These are worth $275,000, but you need only $25,000 so both gifts make a pro rata contribution to make up the $25,000. The remaining property is then distributed to the mother and son. The neighbor and granddaughter take nothing because the full value of their gifts was exhausted in paying the debts.

What if I am forced to sell all the assets and still am not left with enough to pay all her debts?

If the estate is not large enough to pay all of her bills, then all the assets must be sold and applied towards her debts in the following order of priority:

- Administration expenses
- Funeral expenses and medical expense from the last illness
- Family allowances
- Claims of the U.S. government (e.g., taxes)
- Secured claims
- Judgments against her
- All other claims

My aunt's estate is very small. What alternatives are there to a formal probate process?

Some states allow a small estate to be administered in one of the following manners:

Independent Administration: The court approves the appointment of the personal representative, who then files an estate inventory with the court. After that, the personal representative can act on behalf of the estate without any court supervision or approval.

Muniment of Title: The purpose is to simply clear title to certain real property. This can be used when the estate has no debts and there is no need for a personal representative.

Small Estate Affidavit: Heirs file an affidavit with the court stating that they are entitled to outright distribution if the value of the estate is less than an amount specified by state statute (usually $50,000), excluding nonprobate assets, homestead, and family allowances.

Informal Family Settlement: This can be used for small estates that contain only tangible personal property (not bank accounts or stocks).

My uncle executed a Will before he died but now we can't find it. What can we do?

The Will can be probated as a "lost Will" after a few requirements have been satisfied. First, it must be established that he executed a valid Will and that it is lost (as opposed to him having destroyed it before he died). Then the contents of the Will have to proven. This is

usually accomplished by either submitting an acceptable copy of the Will or through the testimony of anybody who knew the contents of the Will, such as the attorney who prepared it.

These days I hear a lot about avoiding probate. Why would I want to do that?

There are many benefits to avoiding probate, chief among them are to reduce or avoid the payment of death taxes and to accomplish the speedy delivery of your belongings to your heirs or beneficiaries. Probate is a costly process, and sometimes a lengthy one. If you can transfer your property without having to go through the court, your family, friends, and loved ones will reap the benefits.

How can I avoid the probate process?

You can avoid probate by planning your estate so that some, or all, of your belongings pass through nonprobate transfers (also called "Will substitutes"). There are many types of Will substitutes, each designed to offer a particular type of benefit. Some options are to place your property in a living trust (by far the most common type), change ownership of your property to joint tenancy or tenancy by the entirety, or give property away during your lifetime.

TIP: You should have a Will even if you decide to transfer property in one of these ways. You can use it to name a guardian for your children, name an executor, and state your wishes in the event you become incapacitated.

Living Trusts

What is a living trust?

A living trust is a trust that is created and becomes effective while you are still alive (as distinguished from a testamentary trust, which is created in your Will and doesn't become effective until you die). It can be revocable, meaning that you can change it or revoke it; or it can be irrevocable, which means that you cannot change it without the court's permission. It is usually created by you, for your benefit, and names you as trustee. This means that you continue to have control over the trust property while you are alive, even though it is now owned by the trust -- you can sell it, mortgage it, or do whatever else you want with it. On your death, the principal is distributed to the beneficiaries named in the trust and the trust ends.

A living trust can help avoid probate by transferring your property into the trust so it is not owned by you on your death. Your beneficiaries do not have to deal with the aggravation of going through probate and waiting up to a year before they receive the property. It gives you great flexibility with respect to managing your property, and if you have a large estate, you can delegate the task of managing certain types of property to a named trustee while you simply collect any income off the property. And you can name a successor or co-trustee who will take over the management of the trust in the event you ever became incapacitated.

How does a living trust avoid probate?

A living trust avoids probate because the property is owned by the trust, not by you, so it is not in your estate when you die. To avoid probate, the property must be placed into the trust before you die. If the property doesn't enter the trust until your death (done through a pour-over Will), the property must pass through probate.

How do I create it?

You execute a written trust document (called a "declaration of trust"), which states your intention to hold specific property in trust for yourself or other named beneficiaries. The document usually contains the following information:

- Trustee: This most often will be you, but you can name a co-trustee to help you.
- Beneficiary: You are usually the income beneficiary. You also need to name a principal beneficiary, who will receive the trust property when you die.
- Assets: Include a list of the assets that will be placed in the trust.

You should also name a successor trustee who will distribute the property to the beneficiaries when you die. The trust also should set forth the trustee's responsibilities, including instructions regarding payment of income and principal to the beneficiaries.

How do I fund my trust?

To fund the trust means that you transfer property into it. If you are creating a living trust, you fund it by depositing money into the trust and transferring property into it. The trust's

assets must be formally transferred into the trust so that they are owned by the trustee and not by you. To transfer the property to the trust, you have to change the property's ownership registration so that it is in the name of the trustee and no longer in your name. For example, if you want to put your stock account in trust, you need to change its ownership registration from "Mary Baker" to "Mary Baker, Trustee of the Mary Baker Trust." Personal property is usually transferred by a bill of sale and real property is transferred by deed.

TIP: To change the ownership registration to trust property, you will have to contact whichever company or agency issued the original title and ask for a new one in the name of the trustee. For example, if you are placing your bank account in the trust, give a copy of the trust instrument to the bank and ask it to change ownership of the account to yourself as trustee of the trust.

When do I fund the trust?

The trust can be funded during your lifetime, or through a pour-over Will, which devises your property to the trust when you die. You can transfer assets through a pour-over Will only to a trust that is created before or concurrently with your Will. If you fund the trust during your lifetime, you avoid probate. But if you fund it through a pour-over Will, that property is subject to probate.

What kind of property can I put into the trust?

You can include anything that you own and have the power to give away, including your interest in property that you own as a tenant in common with others. Examples include artwork, copyrights, real estate, and cash.

What duties do I have as trustee of my living trust?

Basically, you need to keep records regarding which property is placed into the trust, keep an accounting of income earned by the trust and expenses or payments made by the trust, maintain a separate checking account for the trust, and obtain insurance on the trust's assets.

What happens if I devise trust property to someone through my Will?

Nothing. The property already belongs to the trust so you cannot give it away in your Will.

When will my trust end?

Your trust will terminate on the date, or upon the happening of an event, that is specified by you in the trust instrument. For example, you may simply state that the trust is to continue until January 1, 2020. Or you may state that it is to terminate when your child turns 30. When the trust ends, the principal is distributed to the beneficiaries.

Can my creditors reach the trust's assets?

Yes. If the trust is revocable then you maintain a sufficient amount of control over the assets and therefore it is subject to your creditors' claims. To avoid this, you would have to make the trust irrevocable, because you would then retain little or no control over the trust property.

Can I change the terms of my trust?

Yes. You can amend or revoke your trust as long as the trust instrument states that it is revocable. This is important: you need to reserve a right of revocation in the trust instrument or it is presumed to be irrevocable. If the trust is revocable, you can change it however you like. You can add or remove property from it, change the beneficiaries, add a trustee, or change the terms -- and you can make these changes for no reason other than a simple change of heart. If the trust is irrevocable, you will have to request the court's permission based on a change in circumstances.

TIP: If your changes are extensive, you should revoke the trust and start over.

Why would I make the trust irrevocable?

Whether you decide to make your trust irrevocable will depend on the purpose for creating the trust. Irrevocability leaves you with little control over the property after you place it in the trust, but it does have benefits that are not associated with a revocable living trust (living trusts usually being designed to avoid probate and nothing more). For example, if the purpose for creating a trust is simply to avoid probate or relieve you of the task of managing substantial assets, then a revocable trust will accomplish that purpose. But if your estate is large, you might want to minimize federal estate taxes, or you might want to protect the assets from the claims of your creditors. To accomplish these purposes, an irrevocable trust will better suit your needs.

Does a living trust provide more privacy than a Will?

Yes. The trust does not have to be filed so it never becomes a public record. You are insured privacy with respect to the identities of your beneficiaries, the assets of the trust, and the terms for distribution. A Will, on the other hand, becomes a public record when it is filed with the probate court and can be viewed by anyone who goes through the trouble of looking it up.

Will my living trust help avoid estate taxes?

It depends on how the trust is set up. If it is a basic revocable living trust, it is still subject to estate taxes. If it is a tax-saving trust (such as an "AB trust"), it will provide federal estate tax savings.

Life Insurance and Other Property Passing by Contract

What happens to the proceeds of my life insurance policy when I die?

If you named a beneficiary in your policy, the proceeds will pass to that beneficiary without going through probate.

I don't want the beneficiary to receive the proceeds. Can I leave the proceeds to someone else in my Will?

No. If you want to name a new beneficiary before you die, you must change the designation on the contract or the property will pass to the original beneficiary.

What happens if the beneficiary dies before I do?

If you named a contingent beneficiary, he or she will receive the proceeds. If you did not name one, the proceeds will pass with your probate estate, either through your Will's residuary clause or under intestacy.

Are there any alternatives to naming a person as my beneficiary?

Yes. You can name your estate as beneficiary or you can set up a trust so that the proceeds are transferred into the trust instead of directly to a beneficiary (called a "life insurance trust"). The benefit of doing this is so you can specify how the proceeds are to be used: e.g., to support your family, pay for someone's education, or be applied towards expenses related to your death.

What about the proceeds from my IRA or 401k plan?

The proceeds pass to the beneficiary immediately on your death without passing through probate.

Joint Tenancy with Right of Survivorship

What is the difference between property owned in "joint tenancy with right of survivorship" and property owned in "tenancy in common"?

Joint tenancy property cannot go to anyone other than to the surviving joint tenant; tenancy in common property can be devised by your Will or inherited by your heirs. In a joint tenancy with right of survivorship, the property passes to the surviving joint tenant on your death without passing through probate. In a tenancy in common, the property falls into your probate estate and passes to your heirs or beneficiaries.

Are there any disadvantages to owning property as joint tenants with right of survivorship?

Yes. You could lose the property to the other joint tenant's creditors. Or maybe he or she has plans for the property that you don't agree with (he or she may want to sell when you'd prefer to preserve property). To avoid these types of scenarios, be sure that the person is someone you trust before making him or her a joint tenant to your property.

Totten Trust Bank Accounts

What is a "Totten trust" account?

It is a bank account that you hold as trustee for another person (the beneficiary) selected by you. You have complete control over the money during your life, and when you die, the balance remaining in the account passes to the beneficiary without going through probate.

What if the beneficiary dies before me?

If he or she dies before you, the trust terminates. On your death the balance passes through your probate estate.

What if I spend all the money before I die?

If there is nothing in the account when you die, the beneficiary gets nothing.

How is this different from a joint bank account?

In a joint bank account, the joint tenant has rights to access the account while you are alive. The beneficiary of a Totten trust account has no rights to the account until you die, so he or she cannot access it while you are still alive. A joint bank account cannot be gifted to another person in your Will. A Totten trust account, however, can be gifted under your Will to a person other than the named beneficiary.

Custodial Accounts/Uniform Transfers to Minors

What is a "custodial account"?

It is a method of transferring property to a minor child pursuant to the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act (depending on which is adopted by your state). Basically, you leave a gift to the minor by transferring the property to another (the "custodian") who manages the property until the minor turns twenty-one, at which point the property is distributed to the child.

TIP: Remember that under the annual gift tax exclusion, the first $14,000 of the gift is tax-free in 2016 and 2017.

POWERS OF ATTORNEY

What is a durable power of attorney for finances?

A durable power of attorney for finances is an essential part of an estate plan. It gives someone you trust the authority to handle your finances if you cannot do so yourself. “Durable” power of attorney means that the agreement will remain in effect if you become incapacitated. Executing a durable power of attorney is relatively simple and inexpensive—and spares your family great cost and inconvenience if they must seek authority over your finances through the courts.

A durable power of attorney is a written document between you, the principal, and someone you authorize to act on your behalf, called the agent or attorney-in-fact.

The agreement goes into effect when you sign it. Clearly indicate that you want the power of attorney to be "durable." If you do not, the agent’s authority over your finances ends if you become incapacitated. A durable power of attorney remains in effect until you die or cancel the agreement.

Do I need a durable power of attorney if I co-own all assets with my spouse?

Your spouse may not automatically handle all your finances if you become incapacitated. If you and your spouse jointly own bank accounts, your spouse can access all those funds as a co-owner. However, for bigger and more complex transactions, such as those involving real estate and securities, your spouse may not decide for you if you become incapacitated. A durable power of attorney gives your spouse the authority to act on your behalf regarding all your finances.

What powers can I give to my agent?

You can give your agent the power to handle all your finances, or you can specify that your agent only has the power to handle some of your finances. You can spell out the responsibilities you want the agent to have in the document.

The financial authority given to agents could include accessing your bank accounts to pay your bills, collecting Social Security for you, managing your real estate property, filing and paying your taxes, investing your money in stocks and bonds, and operating your small business.

Whatever level of authority you give your agent, they are required by law always to act in your best interest. Agents have a fiduciary duty to you and cannot take advantage.

How do I give someone a durable power of attorney?

It is simple. Just complete and sign the Power of Attorney forms that comply with the laws in your state. You must have the signed document notarized. In some states, witnesses must also watch you sign it.

Under what circumstances does a durable power of attorney end?

Durable powers of attorney end when you die. Your agent has no authority to make financial decisions for you after your death, including making your burial arrangements or transferring your assets to your heirs. Those responsibilities fall to the executor of your Will. You could make the same person your agent and your executor.

A durable power of attorney also ends if you cancel the agreement, and the agreement ends if you get divorced and your spouse was previously named as your agent. A court can invalidate your agreement if you were unduly influenced, tricked or incompetent when you signed it.

Can I name two people to be my agents?

Yes. Both agents must agree on all decisions. If they do not agree, they may have to go to court, which defeats the purpose of executing a durable power of attorney.

HEALTH CARE DOCUMENTS

There are two types of health care documents needed to carry out your wishes for health care in case you become incapacitated: a living will and a durable power of attorney for health care. Different states have various names for these documents and some states have combined the documents into one document called a health care directive.

What is a health care power of attorney?

A health care power of attorney specifies your wishes for health care if you are ever too ill or injured to speak on your own behalf. This is an important document often included as part of an estate plan because even if you cannot speak on your own behalf, with this document you have considerable powers to direct your care despite your being incapacitated. You name a trusted person to oversee your health care and make health care decisions for you if you cannot do so. Depending on the state you live in, this person may be called your "agent," "attorney-in-fact," health care proxy," "health care surrogate," or something similar. Your agent is legally bound to work with your health care professionals to obtain the treatment options and care, to the best of his or her ability, which you would have obtained for yourself. To clarify your wishes, you can use a "living will" or "health care directive" to provide instructions to your agent and health care providers on what type of care you would want, given certain situations.

What types of situations are usually included in the living will?

Your living will is the document in which you can explain what you want and do not want in medical care if you cannot speak for yourself. (A living will has nothing to do with your conventional Will or living trust used to leave property to your heirs at your death. It is strictly to explain your health care preferences.) Most states ask whether you want life-prolonging procedures at the end of life (such as blood transfusions, CPR, diagnostic tests, dialysis, drugs, use of a respirator, or surgery), food and water, pain relief, or do not resuscitate (DNR) orders in case of medical emergency.

What kinds of actions will my agent be able to take under my durable health care power of attorney?

- To consent or refuse any medical treatment in a manner that does not conflict with provisions in your living will
- To determine the best physicians and hospitals for you
- To visit you in the hospital
- To have access to your medical records and information
- To get a court order to authorize withholding medical treatment if a physician or hospital does not honor your wishes to do so (from your living will or the authority of your agent)

What are the limitations on my health care agent?

As long as you can make and communicate your own medical decisions, your health care agent cannot override your decisions regarding your health care. You can limit your agent's authority in any way you wish in your instructions, although it is difficult to anticipate all contingencies in advance. It is vital to appoint a person you thoroughly trust with this responsibility and allow them freedom to serve your best interests if you are unable to make your own decisions. Remember, without a document setting forth your wishes, people who do not know you or your intentions could be the ones deciding for you if you cannot (e.g. distant family members, physicians, hospital administrators, or even courts).

When do the provisions in my health care documents come to an end?

Your written instructions for health care remain in effect for as long as you are alive unless you revoke them, a court invalidates your document because you lacked the mental capacity to execute the documents or because the documents were improperly formed, you get a divorce and your spouse had been named as your agent, or upon your death. In some states, your health care directive remains in force so your agent can order an autopsy, or donate organs on your behalf.

What happens if I become incapacitated and have named no one to handle my financial affairs?

If you have no durable power of attorney for finances, it is possible your loved ones will have to resort to going to court to obtain a conservatorship to take care of your financial matters while you are alive, but incapacitated (e.g. you have advanced Alzheimer's disease or are otherwise incapable of handling your financial affairs). A conservator acts on your behalf to handle all of your financial affairs and is appointed by a court upon the request of your family. Sometimes the conservator of the financial estate is also the health care surrogate. The conservatorship is expensive and time consuming. It requires careful recordkeeping, court hearings, reports to the court, and requests of the court before making major decisions, such as selling real estate. And because court oversight is difficult to maintain, mismanagement is always an issue to be concerned about with conservatorships, regardless of good intentions by the conservator. Finally, because court proceedings are involved, privacy is not maintained, as court records are public.

How do I donate my organs?

To authorize organ donations it is best to carry an organ-donation card with you and make sure your relatives, health care surrogate, and executor of your estate know of your wishes. Organs and tissue samples must be taken immediately after death and your representatives must know your wishes regarding donations so there are no delays. Most states' drivers' licenses have a place for designating organ donation preferences. You can also use your health care directives to indicate your desire to donate organs or tissue for research or transplantation.

What is a HIPAA Authorization?

A HIPAA release form allows your loved one to access your medical records and communicate with your physicians for you if you cannot do so. This form is based on the Health Insurance Portability and Accountability Act (HIPAA), which was designed to aggressively protect your personal medical data.

Neglecting the importance of a HIPAA release form can be burdensome. Medical providers cannot release information about your health to your parent, spouse, child, or other trusted individual without this authorization.

Glossary

DEFINITIONS

Beneficiary
Person (or organization) who receives benefits as described in a Will.

Bequests
Gifts of money or specific items made in a Will.

Cash
All bank and financial accounts which reflect cash investments only. Includes checking and savings accounts, bank CD's (Certificates of Deposit), money market accounts, etc.

Community Property
Community property includes all property and money the spouses shared or acquired during the marriage, except for gifts and inheritance. (Community property states are AZ, CA, ID, LA, NV, NM, TX, WA, AND WI.)

Estate
The property, assets, possessions, and wealth of a person who is making a Will, less any liabilities outstanding at the time of his/her death.

Intangible Personal Property
Property that has value because of what it represents or the rights which it gives the owner. Includes stocks, bonds, copyrights, etc.

Issue
A person's children, grandchildren, great-grandchildren, etc. (i.e., all of the person's direct descendants). Legally adopted children and grandchildren are included, unless the Will expressly excludes them.

Lapse
The ignoring of a bequest. Occurs when a beneficiary is not alive when the bequest takes effect (assuming there is no successor beneficiary named).

Personal Representative (Executor)
The person who manages the distribution of an estate, as described in a Will. This person files tax returns, makes any discretionary decisions, and handles the paperwork for your estate. Also known as an executor.

Per Stirpes
Describes the way a bequest is to be divided among a person's issue, when the person is named as a beneficiary, but dies before you do. A per stirpes bequest would distribute that deceased person's share to his or her children equally. For example, presume that you have three children (Sue, Sally, and John) and that your Will provides for an equal share to each of your children "per stirpes." If all three children survive you, each would get one-third of the

bequest. If, however, John dies before you (predeceases you), his one-third share would be divided equally among his children. (If he had no living issue, his share would be divided between Sue and Sally.)

Real Property
This is real estate, any land or buildings owned, and the permanent fixtures attached. It includes house, land, piers, landscaping, swimming pool, etc.

Residuary (Estate)
This is a catch-all section of your estate. It includes any property which you own but is not named in your Will, as well as any property which cannot be passed per your wishes (usually because a named beneficiary has died before you, without a successor named). Residuary may include any type of property -- stocks, real estate, vehicles, cash, etc.

Successor Beneficiary (Alternate Beneficiary or Contingent Beneficiary)
If a beneficiary does not meet the survivorship requirement or cannot inherit for any reason, any bequests to this person shall be transferred to a substitute ("successor") beneficiary. If no successor is named, or if the successor does not meet this requirement, the bequest shall be ignored completely, just as if the bequest had never been written.

Survivorship
In order to be eligible to receive property through this Will, the beneficiary must outlive the Testator (the person who has died and whose property is being divided) by a measurable period of time. This time period is usually at least thirty days. This is known as "survivorship".

Tangible Personal Property
Most everyday physical objects which have value. Tangible personal property includes cars, furniture, artwork, jewelry, etc.

Testator
This is the person who is making the Will.

Trustee
A trustee is a person who is appointed to manage any Trusts created in your Will (e.g. for the benefit for minors, dependents, or young adults who are not given the responsibility for managing the property themselves).

Trust
A trust is a structure where ownership of property or money transfers to the beneficiary (e.g. a minor, a dependent, or a young adult), who is to receive it only under specific circumstances (e.g., a person's death, reaching a certain age). A separate party (a trustee) is given responsibility and rights for managing the assets. This type of structure and management is for the benefit of the beneficiary. The trustee shall have instructions as to how any money can be distributed and what happens to the income from the trust.