

Everything You've Always Wanted To Know About Wills

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You have worked all your life to provide for your family, and to put that little “nest egg” away for retirement. Unfortunately, while we do not like to think about dying, death is inevitable. Therefore, a question frequently asked is, “What can I do now to ensure my family is taken care of when I die?” The answer is – prepare your will.

What is a will?

A will is a written legal document which permits you to control the disposition of your assets after death. If you own a home, automobile, possessions with financial or sentimental value, or if you keep a bank account, you have an estate that will be left behind upon your death. A will lets you decide who will receive your assets upon your death.

What happens if I die without a will?

If you die without a will, the court will distribute your assets according to Pennsylvania law, which may be contrary to your wishes. For example, if you are single and die leaving three children, the Commonwealth of Pennsylvania dictates that your assets shall pass to your children equally. However, you may not want your assets to pass equally to your children, but instead may want one child to receive more assets than the other two children, since he or she has fallen on hard times. Without a will, you cannot ensure that the child who needs your help gets most of your assets upon your death.

Can I appoint my executor in my will?

Yes. You can appoint your executor in your will. The executor is the person who is responsible for administering your estate after your death, and ensures that your assets are distributed according to your will. If you do not have a will, the court will appoint one of your heirs to administer your estate. The appointed administrator may not be the person you would have chosen.

Can a will help my estate pay less taxes?

Yes. Your estate may pay less in death taxes with a properly prepared will. This is especially true if your estate is subject to federal estate taxes. Currently, estates with a value in excess of one million dollars are subject to this tax.

How can a will help my spouse and I protect our minor children if we die in a common disaster?

A will permits you and your spouse to choose the person or persons who serves as your children’s guardians. Also, a will permits you and your spouse to establish a trust and appoint the trustee for your children. Without a will, the court appoints the guardian and trustee for your children.

Does my will control the disposition of my joint bank account upon my death?

No. If at the time of your death you own an asset which is titled jointly with another individual, upon your death, title to that asset will pass solely to the surviving joint owner by operation of law. For example, if you and your spouse own a joint bank account at the time of your death, title to that account passes solely to your surviving spouse. In this situation, the provisions of your will are not controlling. Therefore, when preparing your will, it is important to know exactly how your assets are titled.

Will my will control the disposition of my life insurance upon my death?

In most cases, the owner of life insurance designates a beneficiary to receive the proceeds upon their death. In this situation, the proceeds pass directly to the designated beneficiary, and the provisions of the decedent’s will do not control. If, however, the decedent designates his or her estate as beneficiary, then the proceeds from the life insurance are subject to the provisions of the decedent’s will.

Can I prepare a will myself?

While you may have heard from friends and neighbors that you can prepare a will yourself or you may have read one of the “do-it-yourself” books on the subject, preparing your will without the assistance of a qualified attorney can be risky. Each state has different statutory requirements that a will must meet to be valid. The last thing you want is for your appointed executor to become involved in a lawsuit after your death concerning the validity of your will. At a minimum, this will quickly eat up the assets in your estate, and may result in your will being declared invalid by the court.

While death is inevitable, the transfer of your assets upon your death to your heirs does not have to be a nightmare. A will permits this process to proceed smoothly without adding stress on your loved ones when they are dealing with your loss. For more information, contact the Law Offices of E. Garrett Gummer, III at 215-396-1001.

E. Garrett Gummer, III concentrates his practice in the areas of Elder Law and Wills and Estates. He received his JD from Widener University and his LLM from Temple University. Mr. Gummer has been certified as an Elder Law Attorney by the National Elder Law Foundation and is a member of the National Association of Elder Law Attorneys (NAELA). He is a member of the Pennsylvania and Philadelphia Bar Association Elder Law Committees, and has served as a Captain in the US Naval Reserve. For more information, contact the Law Offices of E. Garrett Gummer, III at 215-969-5004 or visit us at www.paelderlaw.info