

Independent Investor

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Everything You Need to Know About a Will, But Haven't Thought to Ask

Everyone knows the importance of preparing and maintaining a will, yet many people have never written one. To those who haven't, take note: If you die intestate (without a will), the intestacy laws of the state where you reside will determine how your assets will be distributed. And if minor children are involved, a judge may decide with whom they will live.

On the other hand, if you take the time to prepare a will, you'll be the one who determines how your property is distributed and who will care for your minor children when you're gone. Simply put, a will is one way that provides peace of mind and the immense satisfaction of knowing that you have taken the necessary steps to pass on the fruits of your life's labor to your loved ones.

What Is a Will?

A will is a legal declaration that enables you to direct the disposition of your assets upon your death. You can divide your assets any way you want, as long as guidelines are presented clearly in writing. While wills generally address the bulk of your assets, there are a variety of items that are not covered by the instructions in a will. These items include community property, proceeds from life insurance policy payouts, retirement assets, assets owned as joint tenants with rights of survivorship, and investment accounts that are designated as "transfer on death."¹

Types of Wills

Following are some of the more common types of wills and their intended uses.

- A **simple will** provides for the outright distribution of assets to beneficiaries. This type of will is best for individuals with small, uncomplicated estates.
- A **pour-over will** passes assets into an existing trust or trusts.
- A **living will** expresses an individual's last wishes regarding whether and how the person wishes his or her life to be sustained under specific circumstances.

Drafting a Will

Ideally your will should be drawn up by a lawyer, and you (and your heirs, if possible) should be familiar with its general form and contents. Although it's your legal right to do so, it's usually not a good idea to draft your own will. You may not be aware of the statutory requirements that exist in your particular state for establishing a valid will. State requirements vary and some states may have different standards for witnessing a will, or require specific language that must be included for the will to be considered valid. Having your will at least reviewed by a lawyer can safeguard against potential problems down the road.

When meeting with a lawyer to draft your will, bring the proper information. Such a list typically includes proof of your real property, such as your home, along with documentation that shows how much you paid for it. Also bring a list of intangible property such as your bank and investment accounts along with your latest statements for each; a copy of any life insurance policies; and a list of your debts.

One item that individuals often overlook when drafting their will is a list of professionals they want contacted, such as a financial advisor, insurance agent, banker, or lawyer. Also bring the names of any executor or guardian named for your children.

Key Decision Points

Husbands and wives can write their wills jointly or separately, although most legal professionals recommend the latter. One reason is that joint wills generally bind the surviving spouse to dispose of property per the will's terms despite future changes in circumstances (including tax law changes.)

Also, if you have young children, an important provision is the selection of a guardian who would raise your children in the event of your death and the death of your spouse. If you die without a will and have minor children, a judge may appoint a guardian for them, and there is no guarantee that the court's appointment will coincide with your own wishes.

The Post-Will Process

Once your will is completed, keep an original copy on hand, although it's perfectly fine to make photocopies for family members and friends. Keep the original in a secure place, such as a home or business fireproof safe. If that can't be arranged, keep it in your lawyer's office or with the clerk at your local probate court, who will hold it for safekeeping in a sealed envelope. Wherever you decide to keep your will, make sure that its location is known by family members or close friends.

It's also a good idea to review your will every five years. Your family circumstances or financial fortunes may change, as may federal and state laws. When things do change, periodically reviewing your will with your lawyer (and revising it if necessary) will help to ensure that its contents conform to current laws and regulations and that it reflects your current status and desires.

¹Investopedia, "What Is a Will and Why Do I Need One?" May 24, 2016.

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