

Why Everyone Should Have a Will

A will is a legal declaration that details the management of the estate and the transfer of one's assets upon death. The State of Texas has laws of descent and distribution that govern the distribution of your property if you happen to die without a will. Your property does not pass to the state. Sometimes the individuals that inherit, according to state law, are the same you would provide for under your will, but not always. When you die with a will, the beneficiaries named under your will inherit your property exactly as you specify. This is why it is important for adults to create a will since death is usually unexpected.

Separate and Community Property with Married Couples

Husbands and wives should each have their own will. Your will only disposes of your own separate property and your one-half interest in community property. It does not dispose of your spouse's separate property or your spouse's one-half interest in community property. Community property is all property acquired by a husband or a wife during marriage unless acquired by gift or inheritance. It does not matter who actually earned the money, whose name is on the account, or whose name is on the title. In Texas, community property is owned one-half by the husband and one-half by the wife. In Texas, separate property is any property acquired before the marriage and any property acquired by gift or inheritance during the marriage.

Care of Minor Children When Both Spouses are Deceased

You and your spouse may name guardians for your minor children in your will. Since minors in Texas do not have the capacity to manage property, you may also appoint trustees to manage the property you leave to your children until they reach a certain age. If you do not have a will, the court, in its discretion, may name guardians and trustees whom you may not have chosen.

Drafting Your Own Will

While there are many "do it yourself" wills on the market, it is recommended that each person have an attorney prepare his or her will. Administration of your estate after death can be fairly simple and inexpensive if your will contains very specific language and is executed with all the due formalities required by Texas law. Missing any of this language or its formalities may result in an invalid will and significantly increase the costs of administration.

Drafted Will from Other States

While wills executed in other states are valid in Texas, it is recommended that you revise your will if you are now a Texas resident. Out-of-state wills generally do not contain the specific language that would allow the will to be probated without court supervision.

Probate

Probate is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property. If you die without a will, the cost to probate your estate is substantially higher and more time consuming because of additional requirements of state law. On the other hand, if you have a properly drafted will, the independent executor named in your will may administer your estate with minimal court supervision. This allows the probate process to be completed in a timely and cost effective manner.

Executor

An executor is a personal representative named in your will who is responsible for the probate of your estate. If you die without a will, the court will appoint an administrator of your estate based on the order specified in the Texas Probate Code. If you die with a will, the court will appoint the executor(s) named in your will before considering any other individuals.

Durable Power of Attorney

A durable power of an attorney is a document in which you can name an authorized agent to undertake business or legal matters on your behalf. You may wish to have a durable power of attorney in effect so that a trusted person can undertake transactions on your behalf if you are incapacitated or unavailable. A durable power of attorney is only valid while you are still alive.

Medical Power of Attorney

A medical power of an attorney is a document in which you can name an authorized agent to undertake medical decisions on your behalf if you are no longer capable of making those decisions. A physician has to certify that you are no longer capable of making medical decisions before your agent would have any authority.

Changing or Cancelling a Will

Once created, your will remains valid unless it is revoked by you. However, you should review your will anytime a significant change occurs in your life to determine if it still fits your needs. Examples of a significant change are marriage, divorce, death, additional family members, or a significant change in wealth. You can cancel your will by making a new will that specifically states that it is revoking all prior wills. Or you can change your will by creating a codicil or amendment to your will that will not negate your entire will.

Summary

A will gives you power over your assets and your estate even after your death. By not having a

will, you not only risk higher administrative costs and procedures but more importantly you lose control over the distribution of your assets and estate. If you choose to draft the will yourself, it is wise to at least have a qualified attorney review the will in order to ensure that it complies with state law. All adults should consider creating a will as it not only protects you, it protects your loved ones as well.

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