

What You Need to Know About a Will

Topical Education for Today's Investor

ESTATE PLANNING

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 probate court intervenes and a judge (whom you probably have never met) decides how your assets are to be distributed. And if you're a single parent of minor children, the same judge will 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 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. The portion of your estate covered by a will includes both tangible assets, such as your home or your car, and intangible assets, such as bank accounts and mutual fund shares that are generally owned in your name. Other rights and benefits, like pension rights and life insurance proceeds, are normally handled outside of your will. In most cases, those benefits are paid directly to your designated beneficiaries.

Depending upon the size and structure of your estate, a will can be either basic or complex. No matter what type of will you create, it should include the following items:

- **Your full name**
- **A statement that the document is a will**
- **The date**
- **A statement revoking all previous wills**
- **A specific bequest, which is for the transfer of a particular piece of property to a named beneficiary**
- **A general bequest, which does not specify from which part of the estate the property is to be taken, including provisions for the death of the named beneficiaries**
- **The name of a trust beneficiary, if applicable**
- **Names of guardians and alternates for minor children, if necessary**
- **The names of the executor and substitute executor**
- **Your signature**

Your signature is usually required to be certified by at least two witnesses, preferably by individuals who have no connection to the will, such as employees of the law firm you're using. Do not have someone who is a potential beneficiary of the will act as a witness, as this could raise doubts about the will's authenticity at a later date.

Types of Wills

- A simple will provides for the outright distribution of assets to beneficiaries.
- A will that establishes trusts to receive assets is a testamentary trust will.
- A will that passes assets into existing trusts is a pour-over will.
- A living will declares that you do not wish to be kept alive by medical means if you become mentally or physically incapacitated and have no realistic hope of recovering to lead a normal life.

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 these errors.

When meeting with the appropriate professionals (such as your financial advisor and lawyer) regarding the structure of 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 account and investments; your latest bank statements and brokerage or mutual fund statements; a copy of any life insurance policies; and a list of your debts, including those owed to banks, insurance companies, the Internal Revenue Service, and individuals.

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

Key Criteria

Husbands and wives can write their wills jointly or separately, although most legal professionals recommend the latter, as it is difficult to establish who owns which property in a joint will. Questions also arise as to whether one spouse can change the terms of the will without the consent of the other. Obviously, this can be a particularly thorny issue in the event of a separation or a divorce.

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, the probate court will appoint a guardian for them, and there is no guarantee that the court's appointment of a guardian will coincide with your own. Often the courts take a "blood is thicker than water" approach to children, although

your first choice may have been a friend whose style of child rearing is more in line with your own.

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 or bank safe deposit box. 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 review your will with your financial advisor and lawyer to ensure that its contents conform to current laws and regulations and that it reflects your current status and desires.

Choosing an Executor

When you create a will, you must choose an executor of your estate. Your executor will ensure that the settlement of your estate is properly administered upon your death. This can either be a longtime, trusted friend with a good grasp of conducting financial affairs, or an institution, such as a bank or a law firm, that has the necessary financial and legal expertise.

If you trust your executor completely, it may be a good idea to give that person enough authority to take action on your estate without having to buy a surety, or fidelity bond that ensures your estate against poor management by the executor. The cost of that bond, which can be significant, is usually paid by your estate.

Don't Leave Things to Chance

Much is made in life of the things we can't live without. Little is made — in your financial life, anyway — of the things you can't die without. A will is at the top of that list. While it's unpleasant to contemplate the possibility of your own demise, it's very satisfying to know that you've put your financial house in order.

Points to Remember

1. If you die without a will, the state decides how your assets are allocated and with whom your minor children will live.
2. A will is a legal declaration that gives you greater control, enabling you to direct the disposition of your assets upon your death.
3. To ensure that your will is legally sound, hire a lawyer who is familiar with the statutory requirements for wills in your state.
4. Although husbands and wives can write their wills jointly, most legal experts advise against it. Questions can arise concerning who owns property included in the will and whether one spouse can change the terms of the will without the consent of the other.
5. Once your will is completed and locked away in a safe place, it's a good idea to review it with your financial advisor and lawyer every five years, or as your personal and financial circumstances change.

For more information, please contact your financial advisor.

Important Additional Notes

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Please note that this article provides an introductory overview of wills and estate planning. There are nuances to the development of a customized will for different investors that should be considered and discussed with a tax and/or financial advisor prior to implementing any estate plan.

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