

About Your Will

How Assets Pass at Death

Your estate planning documents include a will. Most wills are similar in their basics; it's the details pertaining to disposition of your assets at your death that ordinarily differ.

When someone dies, how do the assets that the person (commonly called “the decedent”) owned get transferred legally to another person (sometimes called a “legatee” or “beneficiary”)?

At death, title to assets passes in one of three ways:

1. By operation of law. For example, title to a bank account held jointly with right of survivorship with another person passes to the surviving owner(s).
2. By contract. A life insurance policy or a retirement plan with named beneficiaries; or a CD that is “payable on death” all pass by contract: the life insurance company, brokerage, and bank have a contract to pay the beneficiary. A trust works the same way. The trustee must follow the rules in the trust for distributing assets at death.
3. By a statement from the decedent. Usually, these statements are in writing, and are called wills.

Your Will, Briefly Explained

The first part of your Will states who you are and who your family is. If you have minor children, in this part you will name a guardian for your children.

The next part of your Will names your “Personal Representative,” who is the person to whom you entrust to wind up your affairs after your death and distribute your estate to your beneficiaries. Here, you direct that your personal representative pay your debts, including your funeral expenses, as soon as possible.

The next part of your Will is the heart of your Will. It's where you make bequests of your property. Most of our wills provide that your beneficiaries divide your personal

property (called “Tangible Personal Property” in your Will) by agreement, but if they can't agree, your Personal Representative is authorized to conduct an auction. (Of course, if you have left everything to one person, these provisions would not apply and may be omitted from your Will.)

In our experience we have found that even in the most harmonious of family's disputes can arise over the disposition of cherished items of personal property. The auction provision in your Will often resolves such disputes.

One important provision in your Will that you should be aware of appears here. This is the “Written Memorandum” paragraph. This paragraph authorizes you to make special bequests of your personal property

by a document separate from your Will. To be a legal document, the Written Memorandum must be written out entirely in your own handwriting, signed and dated by you.

For instance, you may someday acquire an antique table you want to leave to someone special. Rather than having another Will or a “codicil” added to the Will, this paragraph permits you to write out this special bequest. *Do not write the special bequest on your Will or write on your Will in any way or for any purpose.* To do so risks confusion as to your intentions, may result in a court challenge, and increases the possibility that your Will would be thrown out altogether by the Probate Court.

If your Will includes provisions for establishing a trust, those provisions will be written down at this part of your Will. You will have named a trustee to hold the property in trust for your beneficiaries (such as a spouse or a child with special needs). The paragraphs that would thereafter follow discuss the powers granted to your trustee to hold and manage the trust property, and the limitations on the trust.

The trust must also name the beneficiaries, how distributions are made and in what proportions, and how the trust terminates. If you have created a trust, all of these requirements are included in your Will.

Lastly, your Will states how all other property in your estate will be distributed. This is called the “residuary clause” and is included to make sure that if there is anything left in your estate, someone gets it.

At the end of your Will is place for your signature. The two persons who witnessed your Will have signed affidavits as well. This means that they will not have to appear in Probate Court to prove that this is your Will. Without these affidavits it is possible that the court would be unable by law to admit your Will to probate.

The Personal Representative

Earlier in your Will, you named your Personal Representative. The law imposes upon a Personal Representative the burden of posting a bond and filing certain papers with the Probate Court, such as an inventory, unless the will waives these obligations.

This section of your Will sets forth powers that your Personal Representative may exercise. These give your Personal Representative the broadest possible discretion in the exercise of his or her duties.

Miscellanea

Other paragraphs that may be included in your Will are the “spendthrift” provision, the “supplemental needs” provision, and the “ancillary administration” provision.

The spendthrift provision prohibits creditors of your beneficiaries from having a legal interest in your estate.

The supplemental needs paragraph is a very important provision that allows your Personal Representative to create a trust for a disabled beneficiary so that the inheritance doesn’t disqualify him or her from receiving public benefits such as SSI or Medicaid.

Ancillary administration means that if your estate needs to be administered in another state, your Personal Representative may serve in that state as well as in the state of your residence.

We Don’t Keep Wills for Our Clients

We do not keep originals of wills, ever. These documents belong to you, so you must keep them. We do scan the signed originals and we backup our files faithfully; but we can’t guarantee that the scanned files will always be available.

What Happens to the Will When I Die? A Few Things to Know About Probate

Some people think that because they have a will, their estate doesn't have to go through probate. That is not always the case. Your will expresses your intentions pertaining to the disposition of your estate. The Probate Court's job is to ensure that your Personal Representative carries out your intentions.

Your Personal Representative will present your will to the Probate Court and receive the authority to handle your affairs and administer your estate.

Administration is largely an accounting job. Your Personal Representative accounts for what is in the estate at the time of death, pays the lawful claims against the estate, and pays out the balance as your will directs or as the law provides. Your Personal Representative can enter bank boxes and accounts, sell cars and trucks, transfer or sell stocks and bonds, and collect insur-

ance proceeds payable to the estate.

When your Personal Representative has satisfactorily completed these tasks, your Personal Representative report to the Probate Court and make a final accounting of his or her duties. This final accounting will end your Personal Representative's job as administrator and the Probate Court will enter an order closing the probate estate.

Administration of an estate usually takes about eight or nine months. This does not mean that your beneficiaries cannot receive any of their inheritance before your estate is closed. This length of time is necessary to allow your creditors at least four months, as set forth by law, to file a claim against your estate. If all of your creditors are known and your bills paid, your Personal Representative can make distributions of your estate to your beneficiaries.