

Frequently Asked Questions About Wills, Advance Directive and Powers of Attorney

by: Sheri R. Abrams, Attorney at Law

WHAT DOES A WILL DO?

The simplest way to ensure that your funds, property and personal effects will be distributed after your death according to your wishes is to prepare a will. A will is a legal document designating the transfer of your property and assets after you die. Usually, wills can be written by any person over the age of 18 who is mentally capable, commonly stated as "being of sound mind and body."

WHO NEEDS A WILL?

Although wills are simple to create, about half of all Americans die without one (or Intestate). Without a will to indicate your wishes, the court steps in and distributes your property according to the laws of your state. Wills are not just for the rich; the amount of property you have is irrelevant. A will ensures that what assets you do have will be given to family members or other beneficiaries you designate. If you have no apparent heirs and die without a will, it's even possible the state may claim your estate.

Having a will is especially important if you have young children because it gives you the opportunity to designate a guardian for them in the event of your death. Without a will, the court will appoint a guardian for your children who may be someone you do not even know.

WHAT ARE THE ELEMENTS OF A WILL?

What you generally need to make a will:

- 1) Your name and place of residence;
- 2) Names and addresses of spouse, children and other beneficiaries, such as charities or friends;
- 3) Alternate beneficiaries, in the event a beneficiary dies before you do;
- 4) Name and address of an Executor/ Executrix to manage your estate;
- 5) Name and address of an alternative Executor/Executrix, in the event your first choice is unable or unwilling to act;
- 6) Name and address of a guardian for your minor children;
- 7) Name and address of an alternative guardian, in the event your first choice is unable or unwilling to act;

- 8) The age you wish your minor children to have control of their inheritance;
- 9) Any burial requests you may have (cremation, where you want to be buried, etc.);
- 10) Your signature;
- 11) Two Witnesses' signatures; and
- 12) Notarization.

Two of the most important items included in your will are naming a guardian for minor children and naming an Executor/ Executrix.

WHAT IS A GUARDIAN?

In most cases, a surviving parent assumes the role of sole guardian. However, it's important to name a guardian for minor children in your will in case neither you nor your spouse is able and willing to act. The guardian you choose should be over 18 and willing to assume the responsibility. Talk to the person ahead of time about what you are asking. You can name a couple as co-guardians, but that may not be advisable. It's always possible the guardians may choose to go their separate ways at some later date, and, if so, a custody battle could ensue. If you do not name a guardian to care for your children, a judge will appoint one, and it may not be someone you would have chosen.

WHAT IS An EXECUTOR/EXECUTRIX AND WHAT DO THEY DO?

An Executor/Executrix is the person who oversees the distribution of your assets in accordance with your will. Most people choose their spouse, an adult child, a relative, or a friend to fulfill this duty.

If no Executor/Executrix is named in a will, a Probate Judge will appoint one. Probate refers to the legal procedure for the orderly distribution of property in a person's estate. The Executor/Executrix files the will in probate court, where a Judge decides if the will is valid. If it is found to be valid, assets are distributed according to the will. If the will is found to be invalid, assets are distributed in accordance with state laws.

Responsibilities usually undertaken by an Executor/Executrix include:

- Paying valid creditors;
- Paying taxes;
- Notifying Social Security and other agencies and companies of your death;
- Canceling credit cards, magazine subscriptions, etc.; and
- Distributing assets according to the will.

WHAT ABOUT UPDATING MY WILL?

You'll probably need to update your will several times during the course of your life. For example, a change in marital status, the birth of a child or a move to a new state should all prompt a review of your will. You can update your will by amending it by way of a Codicil or by drawing up a new one. Generally, people choose to issue a new will that supersedes the old document. Be sure to destroy the old will after you sign a new one.

WHAT ABOUT ESTATE TAXES?

The property included in your will may be subject to taxation. In planning your will, you may need to take into account the following:

- State death or inheritance taxes
- Federal income taxes
- State income taxes

You may be able to minimize your estate tax by establishing a trust or giving gifts during your lifetime. You should consult a tax or financial professional to determine a plan that is right for you and your family.

WHERE SHOULD I KEEP MY WILL?

Once your will is written, store it in a safe place that is accessible to others after your death. I suggest that you keep it in a fire proof box that you can purchase at any office supply store. I do not suggest that you keep your will in a safe deposit box because many states will seal your safe deposit box upon your death. Make sure a close friend or relative knows where to find your will.

WHAT IS An ADVANCE DIRECTIVE?

An Advance Directive (which used to be called a living will) is not a part of your will. It is a separate document that lets your family members know what type of care you do or don't want to receive should you become terminally ill or permanently unconscious. It becomes effective only when you cannot express your wishes yourself. Discuss your wishes as reflected in your living will with family members, and be sure all your doctors have a signed copy.

WHAT IS A HEALTH CARE POWER OF ATTORNEY ?

A Health Care Power of Attorney is not a part of your will. It is a separate document that authorizes someone you name to act in accordance with your medical intentions. It becomes effective only when you cannot express your wishes yourself. You should make sure that all your doctors have a signed copy.

WHAT IS A DURABLE POWER OF ATTORNEY?

A durable power of attorney is not a part of your will. It is a separate document that authorizes someone you name to act in accordance with your financial intentions. It becomes effective only when you cannot express your wishes yourself. You should make sure that all your financial professionals (stockbrokers, accountants, financial planners) and banks have a signed copy.

PLAN AHEAD

The end of your life is something you probably don't want to dwell on, but thinking about what will happen to your loved ones and your assets and personal possessions is important. Making sure you've done all you can to make their lives easier will give you peace of mind. And once your will is drafted, you won't have to think about it again unless something significant in your life changes.

About The Author

Sheri R. Abrams is an Attorney in Fairfax, Virginia. Ms. Abrams is a graduate of Boston University's School of Management and the George Washington University School of Law. Ms. Abrams is rated "AV" by Martindale-Hubbell. More information can be found at <http://www.sheriabrams.com>