

## Why Do I Need A Will?

By: Shana Siegel, Esq.

All competent adults--whether married, single, parents, or not--should have a will. A will is more than a formal legal document setting forth who you want to get your assets. Your will can also specify who you want to serve as guardians to take care of your children and make other important directives. Wills are also important tools for establishing trusts for the benefit of others and, in many cases, for reducing or eliminating taxes. Here are just a few reasons why you should take the time *now* to create a will.

### **1) Ensure your wishes are honored: Don't let the state decide who gets what.**

If you die without a will, state law governs how your assets are split. This may lead to unintended consequences such as your parents inheriting a portion of your estate instead of it all going to your spouse. This could mean that your spouse is unable to sell your house or other property without other's permission. If you want to remember your parents or siblings, it is best to leave them specific assets in your will. If you're divorced or single with no children, then the state is likely to decide who among your blood relatives, or even step-children, will inherit your estate.

### **2) Plan for and provide for your children's care.**

If you have minor children, your greatest concern may not be who gets your assets, but rather, who will take care of your children. A will is the only way to designate who you want to raise your children. Further, a will should set forth what assets your children will receive and who will manage the assets until your children are able to manage the assets themselves. By establishing a trust for your children either inside or outside of your will, you can even specify when and how they will receive assets.

### **3) Provide guidance for your loved ones and protect them from added burden.**

With an appropriately executed will, your loved ones will have specific guidance as to your wishes. You may want certain people to get special items. Without a will, in many situations your heirs will become co-owners of every asset you own and will have to manage all the property together. They may not live in the same state, or they may not be able to agree on what should be done with the property. With a will, you can leave specific assets to specific individuals, or name one person as trustee for the others. Either way, writing a will would save your loved ones significant hassle and expense, as well as preventing feuding.

A will also allows you to designate who you want to handle your affairs and make decisions upon your death. Your personal representative, or executor, is responsible for making sure property is distributed according to your wishes. People often name their spouse, a competent relative or trusted friend. If you fail to name a personal representative or that person is unavailable, the court will appoint one for you.

### **4) Ensure your planning is fully implemented.**

A will is also important even if you are using other planning tools such as a revocable living trust. Although these documents have many advantages including making probate much quicker and easier, you still need a will since there are generally some assets which are not held by the trust. In addition, a will ensures that all the assets you intended to put into trust are put there even if you fail to retitle some of them before your death. Any assets that are not retitled in the name of the trust are considered subject to probate. As a result, if you haven't specified in a will who should get those assets, a court may decide to distribute them to heirs whom you may not have chosen.

## Doing It Right

Some individuals may be able to use online or pre-packaged legal forms to create a will without an attorney. However, a will is useless if it is not validly prepared, witnessed and signed according to specific procedures set forth in state law. Often do-it-yourself wills are not state specific and do not adequately protect most individuals. Certainly, if you have minor children or more than very minimal assets, it's a good idea to have a lawyer prepare your will. The expense is fairly minor, especially if you consider the potential costs of dealing with an ambiguous will. In that situation, any savings to you will be more than offset by the added grief and legal costs to your family. Similarly, it is essential to execute powers of attorney for health care (otherwise known as a health care proxy or living will) and financial matters. If you become incapacitated by illness or accident, a power of attorney will be critical to allow a friend or loved one to pay your bills and make health care decisions for you. These simple documents not only save money later, but they give you the security of knowing things will be taken care of in your absence.

It is also a good idea to review your will periodically and especially when your financial and/or marital status changes. A will written twenty years ago may not be appropriate given changed situations and may not reflect your current wishes. For example, many older adults choose to change their will to designate a new executor because they do not want an ailing spouse to have to deal with these issues. It is also important to review your beneficiary designations for your 401(k), IRA, pension, and life insurance policy since those assets will be transferred automatically to your named beneficiaries when you die.

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*Note: Please remember that this article is written for public education, not as legal advice. If you require legal advice for a particular situation, you should consult an attorney.*