



Last Will and Testament: Legal and Financial Planning

AN EXPERT GUIDE

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Summary

Estate planning is the strategic management of a person's assets to ensure they are distributed according to their wishes, both during their lifetime and after their death. This includes deciding how assets will be passed on to heirs, loved ones, and/or charities. Estate planning also encompasses:

1. Planning for potential incapacity.
2. Reducing uncertainties in the administration of a probate.
3. Maximizing the value of the estate by minimizing taxes and other expenses.

The ultimate goal of estate planning is not set in stone, but rather a flexible concept that can be shaped by the goals of the estate owner. It can be as simple or complex as the owner desires.

Estate planning includes a variety of tasks and legal mechanisms such as preparing a will, establishing trusts, specifying beneficiary designations, and setting up powers of attorney, including durable financial and medical powers of attorney.

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Introduction

A will, often referred to as a last will and testament, is a legal document that expresses a person's wishes (the “testator”) regarding the distribution of their property (referred to as the estate) after their death. It also designates a person (the “executor”) to manage the property until its final distribution. In cases where a will does not specify estate distribution, the legal processes of inheritance and intestacy (when someone passes away without a will, trust, or another plan for their estate) will come into play.

Benefits of Having a Will

A well-crafted estate plan provides peace of mind for older individuals and their families, knowing that their assets will be distributed according to their desires.

CONTROL

Individuals can ensure their assets go to their closest loved ones, like their adult children and other dependents. Alternatively, they can leave their assets to non-related beneficiaries, such as a de-facto spouse, friends, or charities.

TRUST AND PEACE OF MIND

If someone passes away without a will, the process of handling their estate can become lengthier, more stressful, and may be subject to disputes. When creating a will, the testator can designate someone as an executor to manage their affairs after life's end.

SIMPLIFY ASSET DISTRIBUTION

Upon the testator's passing, the individual(s) selected as the executor(s) will be able to access and distribute their assets without the need for a lengthy court

procedure, which can span several months and potentially delay the distribution process.

PROTECTION OF ASSETS

Without a will, the assets will be distributed according to intestacy laws, which may not reflect specific wishes or intentions. The testator can include other wishes in their will, such as funeral arrangements, burial or cremation preferences, religious ceremonies, etc., which can reduce confusion and family disagreements during a stressful and emotionally difficult time.

Steps to Creating a Will

1. DECIDE HOW TO WRITE THE WILL

There are several methods for creating a will: using a lawyer, utilizing an online service, or drafting one yourself.

Preparing a will with the assistance of an estate planning lawyer is the most conventional and reliable approach. Working with a lawyer can guarantee that the will is accurate and thorough, covering all essential aspects with advice from a legal professional.

An online platform for creating wills is a convenient option for individuals with simple estate plans who do not have complex assets, such as multiple properties, businesses, or investments.

When someone writes a will by themselves, it can get complicated. The will must meet state-specific requirements to be considered valid. If it does not, the will could be considered invalid and be subject to the state's intestate succession laws. This means that a probate court might decide what happens to the assets.

2. PICK AN EXECUTOR

When creating a will, selecting the right executor is important. The executor plays a critical role in ensuring that the testator's wishes are carried out and their assets are distributed according to the will. While some individuals prefer to appoint their estate planning attorney to this role, others may opt for a trusted individual who understands the duties associated with executing a will.

3. SELECT THE BENEFICIARY OR BENEFICIARIES

To ensure that the assets are distributed according to the testator's wishes, one or more beneficiaries must be designated to receive them. The testator can specify different items for different beneficiaries, but it is important to provide each beneficiary's full name to avoid any future complications or confusion. Additionally, they can designate a business or organization as a beneficiary to receive the assets.

4. WRITE INSTRUCTIONS FOR THE ASSETS

When preparing a will, creating a comprehensive list of all the assets intended to be included is crucial. After identifying them, a beneficiary for each asset should be selected, whether they are all designated to the same individual or distributed among multiple people. In this part of the process, the will can provide specific instructions regarding how the executor should manage the distribution of the estate.

For instance, the will may instruct them to personally meet with each named individual or gather everyone for a formal reading of the will. Additionally, this section can explain why the testator selected each beneficiary for every asset.

5. SIGN THE WILL

The signature plays a critical role in making the will legally binding. However, just signing the document is not sufficient to establish its legality. Generally, a will needs to be signed by two witnesses. These witnesses should be disinterested witnesses, meaning they are not set to gain anything from the will.

Common Mistakes to Avoid

FAILING TO ANTICIPATE THE DEATH OF BENEFICIARIES OR THE EXECUTOR

One common mistake is failing to consider the possibility that the beneficiaries or executor named in a will might pass away before the testator. To prevent complications, it is crucial to designate alternate beneficiaries or an alternate executor in case any of the original individuals can no longer fulfill their roles.

NOT INCLUDING INSTRUCTIONS FOR DIGITAL ASSETS IN THE WILL

Digital assets include a wide range of items, including those with financial value, such as cryptocurrencies and revenue-generating websites, as well as those with sentimental value, like email accounts and personal photos. It is important to consider these digital assets in estate planning, as without a plan in place, there is a significant risk that these online properties could be lost forever after the testator's passing or if they become incapacitated.

Examples

SIMPLE WILL FOR A SINGLE SENIOR

Jane, a retired teacher with no children, wants to leave her assets to her siblings and a charity.

Details: She owns a home, a savings account, and a small investment portfolio.

Plan: Jane drafts a simple will using an online platform that states her house and investment portfolio will go to her siblings, while her savings account will be donated to a local charity. This ensures her assets will be distributed by her wishes, and her siblings and charity are clear beneficiaries.

COMPLEX WILL FOR A SENIOR WITH A BLENDED FAMILY

Doug, a senior with children from two marriages, wants to ensure his assets are distributed fairly among all his children.

Details: He owns multiple properties, investments, and personal belongings.

Plan: Working with an attorney, Doug creates a detailed will that allocates specific assets to his children from his first marriage and others to his children from his second marriage, ensuring equitable distribution. The clear and precise instructions in the will can prevent potential disputes among the children.

WILL FOR A SENIOR BUSINESS OWNER

Helen owns a small business and wants to make sure the business continues smoothly after her death.

Details: Her assets include her business, a home, and investment accounts.

Plan: The will includes a detailed succession plan for her business, it names a trusted employee as the successor and specifies the distribution of her personal assets to her children.

WILL FOR JOINT OWNERSHIP OF AN ASSET

Mark's family has owned a vacation home for generations, and he wants his children to share ownership of the property.

Details: Because Mark is the sole owner of the property, the distribution of shares can be included in his will.

Plan: Mark's estate lawyer will draft a clause which can divide the shares of ownership of the vacation home equally. His executor will need to know how the shares are divided so Mark's kids can understand how to proceed with joint ownership.

Terms to Know

Will: A legal document expressing the wishes of a person regarding the distribution of their property, assets, and other matters after their death.

Testator: The person who creates and signs the will.

Executor: The person appointed in the will to administer the estate, ensuring the testator's wishes are carried out and distributions to beneficiaries are handled.

Beneficiary: An individual or entity named in the will to receive assets, property, or inheritance from the testator's estate.

Probate: The legal process in which a will is validated by the court, the executor is given authority to distribute the assets, and debts and taxes are settled.

Intestate: The state of dying without a valid will. When this happens, the distribution of the estate is handled according to state laws.

Additional Resources

At LifeWorx, we are committed to supporting you through every stage of planning for future healthcare needs. We offer a range of resources to help you understand options for long-term care and ensure peace of mind. Here are some additional topics that may be helpful:

- [Long-Term Care Insurance White Papers](#)
- [Guides](#)

- [FAQ](#)