

MAKING YOUR WILL

1. Q. WHAT IS A LAST WILL AND TESTAMENT?

A. A last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship of your children after your death. A will is not effective until death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.

2. Q. CAN MY LAST WILL AND TESTAMENT BE CHANGED?

A. Yes. Changes to a will are made by drafting a new will and destroying the old one. **NEVER MAKE ANY CHANGES TO YOUR WILL WITHOUT CONSULTING AN ATTORNEY.** Changes on the face of your original will may make it invalid.

3. Q. WHAT IS MY ESTATE?

A. Your estate consists of all of your property and personal belongings which you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. Although the proceeds of insurance policies may be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for federal tax purposes, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

4. Q. TO WHOM SHOULD I LEAVE MY ESTATE?

A. A person who receives property through a will is known as a "beneficiary." You may leave all of your property to one beneficiary or you may wish to divide your estate among several persons. You may designate in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: "primary beneficiaries" and "secondary beneficiaries" - those who will inherit your property in the event the primary beneficiaries die before you. You may also want to select a third level beneficiary in the event both the primary and secondary beneficiaries die before you.

5. Q. MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?

A. Generally, you are free to give your property to whomever you desire. However, most states have laws which entitle spouses to at least part of the other spouse's estate. Insurance proceeds and jointly owned property may be controlled by other provisions of the law.

6. Q. SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

A. Yes. A guardian should be named in a will to ensure that the children are cared for in the event that both parents die. Your guardian should be chosen with extreme care as this person will be charged with the duty of raising your children and managing their legal affairs. If you do not provide for a trust, the guardian may also control that portion of your estate which is inherited by your children until they are of legal age. Do not automatically assume that your parents or any other relative will be suitable guardians. Such factors as the age of the guardian, age of the children, religion, social status, economics and relation of the proposed guardian to the children, if any, should be considered in making your decision. Additionally, an alternate guardian should be chosen with same care as the primary guardian just in case the primary guardian is unable or unwilling to serve as guardian.

7. Q. I WANT MY PARENTS TO BE THE GUARDIANS OF OUR CHILDREN AND MY SPOUSE DISAGREES. DO WE HAVE TO AGREE ON THE APPOINTMENT OF A GUARDIAN AND ALTERNATE GUARDIAN?

A. In most cases, yes. The guardianship provision normally goes into effect when both parents die at or about the same time. As an example, if the husband's will nominates his parents and the wife's nominates her parents and both husband and wife die at or about the same time, then the court will have to decide who is the proper party to be the children's guardian. That will cause undue hardship on all parties concerned as well as considerable unnecessary expense, a large part of which your estate will have to pay. Additionally, if your children are by a prior marriage, their natural parent will normally receive custody if she or he is still living.

8. Q. WHAT IS AN EXECUTOR?

A. An executor is the person who will manage and settle your estate according to the will. You should also consider

naming an alternate executor in the event that the primary executor is unable or unwilling to act as the executor of your estate. By the wording of your will, you can require that your executor or alternate executor be required to post bond or other security or you can waive this requirement, thereby saving expense to your estate. The choice is yours.

9. Q. SHOULD I SET UP A TRUST IN MY WILL?

A. If you have at least one minor child, you should consider setting up a trust in your will. This device will ensure that given certain circumstances, such as the death of you and your spouse, any surviving minor children will be provided for by the assets in that trust. Ultimately, through the proper selection of a person to manage the trust (trustee) your children will be provided for in the manner that you have dictated in your will. It is important to remember that all of states provide very strict laws as to the duties and fiduciary responsibilities of a trustee. Therefore, you should carefully consider whether the person or bank you select as trustee has legal, accounting or banking experience or has a good head for managing finances.

10. Q. WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

A. Ask them while your legal assistance attorney/paralegal is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to the attorney/paralegal.

11. Q. HOW LONG IS A WILL GOOD?

A. A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after a will has been made, such as tax law, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, can effect whether your will is still adequate or whether your property will pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will with the help of an attorney. Therefore, it is a good idea to have your will reviewed at least every three years, or whenever a major event such as a divorce or the death of a person named in your will occurs to see if the will still accomplishes your desires in distributing your estate.

12. Q. DOES A WILL INCREASE PROBATE EXPENSE?

A. No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the Federal and state tax laws. Drawing a will can avoid the expense of posting bond or appointing a guardian for your children. A will can save money for you and your family if it is properly drafted.

13. Q. HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

A. Everyone who owns any real or personal property should have a will regardless of the present amount of his or her estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives, and other factors.

14. Q. WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?

A. When a person dies without a will (or dies "Intestate" as the law calls it) the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a will, you don't have any say as to how your property will be divided. Additionally, the laws of each state differ on how the property must be divided, so the laws of the state where you die or your property is located may apply.

15. Q. WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A. Joint bank accounts and real property held in the names of both husband and wife if held with a right of survivorship usually pass to the survivor by law and not by the terms of the deceased's will. There are cases, however, in which it is not to your advantage to hold property in this manner and you should ask the attorney/paralegal who drafts your will about this.

16. Q. IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

A. No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will.