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Part 2: The Inner Workings of a Will

Establishing a will may not be the most exciting topic to discuss but it is undoubtedly essential. Nobody wants to think about their eventual passing, but ensuring the distribution of your assets according to your wishes is crucial. In this article we will explore the importance of creating a will and provide some helpful tips to make the process as smooth and stress-free as possible.

What is a Will

A will, also known as a last will and testament, is a legal document outlining your wishes regarding the distribution of your assets after you pass away. Your will is essential to estate planning and can help ensure your loved ones are cared for after you pass away.

When creating a last will and testament, it is important to identify your beneficiaries, the individuals slated to inherit your assets. You can also designate an executor, who will assume responsibility for administering your estate and ensuring the fulfillment of your wishes.

A will provides peace of mind by ensuring your wishes will be carried out, knowing you have selected a trusted person to distribute your assets. Equally as important, your last will and testament should name the person who will raise your children if both you and your spouse pass away.



What is the Role of the Executor of Your Will

An executor of a will is a person or entity you appoint to carry out the instructions outlined in your last will and testament after you pass away. Besides ensuring that your wishes are carried out, your executor also has other duties they perform for you, including:

1. Filing the will with the appropriate probate court and obtaining the necessary legal documents to begin the probate process.
2. Identifying and locating all assets and property included in your estate.
3. Paying any debts or taxes owed by your estate.
4. Distributing our assets and property according to the instructions outlined in your will.
5. Making any necessary court appearances and filings on behalf of your estate.
6. Communicating with beneficiaries and other interested parties about the progress of the probate process.
7. Resolving any disputes or conflicts that may arise during the probate process.

Your executor plays a critical role in fulfilling your wishes after your death. Choosing an executor who is trustworthy, responsible, and capable of carrying out the duties outlined in your last will and testament is essential.

Types of Wills You Can Create

Simple Wills

These are the most basic types of wills, and they typically outline how to distribute your assets when you pass away.

Pour-over Wills

You use this type of will in conjunction with a trust. Upon your passing, they transfer any assets not transferred into the trust during your lifetime, into the trust. (to learn more about trusts, please see **Using a Trust to Exercise More Control** article in this series.)

Living Wills

These are not technically wills for estate purposes, but rather, they are documents outlining your healthcare wishes if you become incapacitated. It is a crucial part of your overall estate planning.



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Joint Wills

Two people, typically spouses, create these wills to leave their assets to each other. It is important to note that others can challenge their wills in court, so working with a qualified estate planning attorney is essential to ensure your wishes are clear and legally enforceable.

Creating a last will and testament is a crucial step in estate planning and can help ensure your assets are distributed according to your wishes after you are gone.

What is Probate

Probate is the legal process of distributing your assets to your beneficiaries or heirs. When you pass away, your assets may need to go through probate whether you have a will or not. However, having a will can make the probate process smoother and less stressful for your loved ones.

When creating a will, you typically name an executor to manage the probate process. As described above, your executor is responsible for gathering your assets, paying off any debts or taxes owed, and distributing the remaining assets to the beneficiaries named in your will. If there are disputes over your will or its validity, the probate court may need to intervene to resolve them.

Having a last will and testament can make the probate process easier and faster because it outlines your wishes and helps avoid confusion and disagreements among your family members. It can also help ensure the distribution of your assets according to your wishes rather than state law.

It is important to note that the probate process can vary depending on the state you live in, so it is better to consult with an estate attorney to understand your area's specific laws and requirements.

Naming a Guardian for Your Children

Naming a guardian in your last will and testament is a crucial step in ensuring the well-being of your children in the event of your untimely passing. By designating a guardian in your will, you are making a legally binding decision about who you would like to take care of your children if you are no longer able to do so yourself.



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There are several key factors to consider when naming a guardian in your will, including the age and suitability of the potential guardian, their relationship with your children or dependents, their financial stability, and their ability to provide a stable and loving home.

It is important to have a conversation with the potential guardian before naming them in your will to ensure they are willing and able to take on the responsibility. It is also better to name an alternate guardian in case your first choice is unable or unwilling to serve.

Naming a guardian in your will is a crucial step in protecting the well-being of your loved ones, and it is important to approach this decision thoughtfully and with the guidance of a qualified legal professional.

Other Factors to Think About When Creating a Will?

We have outlined all the advantages of creating a will and strongly suggest you create one.

However, it is important to consider all aspects of creating a will, so here are a few other data points to keep in mind:

Cost

Depending on the complexity of your estate and the type of will you create, it can be expensive to hire an attorney to draft the legal document. These expenses can be a barrier for people with limited financial resources.

Time-consuming

Creating a will can be time-consuming, especially if your estate is large or complicated. Giving yourself ample time to think through your decisions and ensuring your will accurately reflects your wishes is important.

Emotional stress

Thinking about what will happen after you pass away can be emotionally challenging, and creating a will may bring up complicated feelings or conversations with loved ones.

Potential for disputes

Even with a last will and testament in place, family members or other interested parties may contest the will and challenge its validity. This can lead to legal battles and further emotional stress for everyone involved.



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Inflexibility

Once you create a will, it can be challenging to make changes or updates, especially if you become incapacitated. This can limit your ability to adjust your estate plan as circumstances change.

A Final Point

Despite these potential factors, it is important to remember creating a will can provide peace of mind and help ensure your wishes are fulfilled after you pass away. With careful consideration and the guidance of a qualified professional, you can create a will that meets your needs and min



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