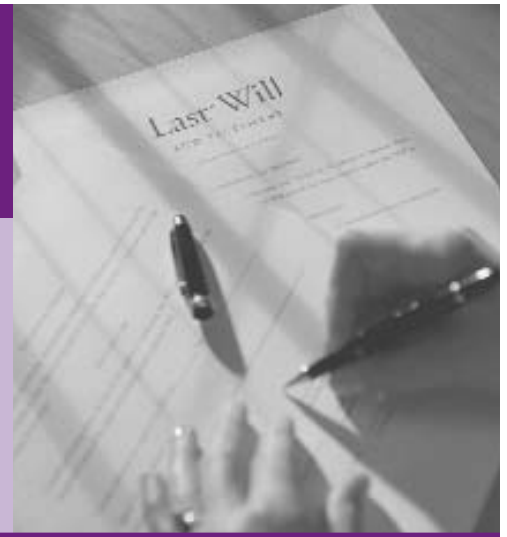


Client Information



Why You Should Have a Will

Prepared by the Estates and Probate Section

WHAT IS A WILL?

A will is a document meeting certain formal requirements in which you provide for the disposition of your assets after death.

WHO CAN MAKE A WILL?

In Connecticut, anyone who is at least eighteen years old and of sound mind can make a will.

HOW IS A WILL MADE?

Because a will is such an important document, certain formalities must be observed in the preparation and signing of a valid will. Only a document which satisfies all of the following requirements imposed by law can be treated as an effective will:

- A will executed in Connecticut must be in writing.
- The will must be signed by the person making it.
- The will must be signed in the presence of two witnesses. The witnesses must sign the will in the presence of the person making it.

IS A LAWYER NECESSARY?

The law does not require that wills be written by lawyers. However, the writing of a will is so important that it should be done by a professional. Only lawyers have the training and experience needed to advise you on the subject, to make sure that your objectives are taken into account in the context of your family, and to draft a will that expresses your wishes in language that is legally clear and free from ambiguity.

HOW LONG IS A WILL GOOD FOR?

A will remains in effect until it is revoked. You can revoke your will at any time before you die or become incapacitated. In addition, a subsequent marriage, divorce or dissolution of marriage, or birth or adoption of a minor child may revoke all or a portion of a will unless a provision is made to cover such an occurrence. It is a good idea to periodically review your will to confirm it still carries out your goals in light of your current circumstances.

CAN A WILL BE CHANGED?

A will can be changed or added to at any time provided all the formal requirements are observed. This can be done either by another document called a codicil or by a new will. A will should be changed whenever it no longer meets an individual's

needs for any reason, including a change in family circumstances, change in assets, or changes in the law.

CAN I WRITE A WILL MYSELF?

Use of "do-it-yourself" forms is unwise. They are normally generic documents written for use on a national basis and do not take into account individual state laws or personal capabilities, needs, and wishes. "Do-it-yourself" forms may be ineffective in accomplishing the purposes that you intend, and ultimately may be more costly because of the legal proceedings that may be needed to sort out an improperly drafted document.

DOES A WILL INCREASE PROBATE EXPENSES AND TAXES?

Connecticut probate court fees are based on the size of an estate whether there is a will or not. Assets owned by a decedent that are not held in a trust are subject to probate court jurisdiction whether or not there is a will. A carefully drawn will can often result in tax savings and may also result in a reduction of administration expenses such as premiums on surety bonds.

IS JOINTLY OWNED PROPERTY A SUBSTITUTE FOR A WILL?

When most people refer to jointly owned assets they mean assets held by two or more people, usually husband and wife, as joint tenants with rights of survivorship. When one of the joint owners dies, title to the asset automatically passes to the survivor. While this may be useful in some circumstances, it should not be considered as a substitute for a will. There is nothing wrong with owning property jointly as long as it is coordinated with your estate plan. Joint ownership is a rigid arrangement. There are tax consequences to both the creation and termination of joint ownership. It does not eliminate estate or succession tax problems and can create new problems, especially if the order of deaths is different than that contemplated when the joint ownership was created. Remember, your will does not control jointly held property; so, if you make a will, make sure the ownership of assets is consistent with your desired approach.

DO I HAVE TO LEAVE MY ASSETS TO MY FAMILY?

If you are married, Connecticut law provides that your spouse is entitled to a life interest in one-third of your probate estate, regardless of what your will says. Otherwise, you can, by will, provide for any distribution you desire.

WHAT HAPPENS WHEN NO WILL EXISTS?

When a will does not exist, the state law establishes how your estate will be distributed, and the distribution imposed by law cannot take into account your partic-

ular desires or the special circumstances which may exist in your family. This can result in your estate being distributed in a way you did not foresee or would not have wanted. For example, a man with a wife and young children might assume that if he died everything he owned would go to his wife; yet, without a will, his wife would receive \$100,000 and half of the balance, with the other half held by a guardian for the children.

WHAT CAN A WILL DO?

With a will you can provide for the particular needs of your family, whether it be a child who needs special care, an aging parent, or other special circumstances that exist in most families. There are ways of meeting these needs through a carefully drawn will, but when no will exists, such special needs will go unanswered.

When a will is drafted in conjunction with a well thought out overall estate plan, you can also take advantage of the many ways to reduce expenses and taxes and thus avoid unnecessary shrinkage of the estate. When no will exists, many of these opportunities to preserve the estate are lost.

With a will, the surviving parent of a minor child may appoint as guardian of the child a person in whom the parent has confidence and trust. When no will exists, the probate court will act alone to appoint the guardian.

One of the important ways a will can help implement your estate plan is through the use of trusts. Although this topic is too broad to cover in detail in this brochure, generally, the use of trusts in a will can provide for assets to be held in trust for the benefit of a person or persons (typically, a spouse and/or children) for a period of time. Trusts are usually established to protect assets for the beneficiaries, but they may also be established for tax reasons. When and how to use trusts in your will should be discussed with your lawyer.

ADMINISTRATION

Only with a will can you select the executor who will be entrusted with settling your estate and carrying out the particular distribution called for in the will. Often a family member or trusted advisor is chosen.

When no will exists the probate court will appoint someone to administer the estate and carry out the mandated distribution. This can result in higher costs. Further, a will can authorize the executor to do necessary things in settling the estate without seeking the prior approval of the probate court.

CONCLUSION

A will allows you to direct the passing of your assets at death, name a guardian of your minor children, establish trusts for beneficiaries, and name an executor to manage your estate. The fee to prepare a will that meets your needs is generally small given what it can accomplish.

