ANSWERING YOUR LEGAL QUESTIONS ABOUT WILLS

WHAT IS A WILL?

A Will is a written document that allows you to designate:

- Who will receive your estate (your property that does not pass by beneficiary designation or joint ownership arrangement; see more below) after you die;
- Who will raise your children if you die while they're still minors, and your spouse is unavailable to care for them;
- Whether your beneficiaries receive their inheritance outright or in a trust;
- Who will serve as your personal representative – that is, the person who will pay your bills and taxes and distribute the rest of your estate to your beneficiaries.

WHEN SHOULD I WRITE A WILL?

If you have accumulated some assets, and you care who will receive those assets if you die, it's time to write a will.

Anyone with minor children definitely should have a will. In it, you can name the person you want to raise your children, should something happen to you and your spouse. Discuss this carefully with the prospective guardian, to be sure he or she is up to the job. Also, name an alternate guardian in your will as a backup.

On the other hand, if you're a young adult, have no minor children, and own few possessions, you probably don't need a will yet. The state would distribute your possessions to your parents. But if you'd rather leave your car to your girlfriend, or your prized Spider Man comic book collection to a favorite nephew, then a simple will is a good idea.

WHAT IF I DIE WITHOUT A WILL?

In this case, the court appoints a personal representative who distributes your entire estate to your surviving spouse, unless you have children from outside your current marriage. In that case, your spouse receives the first $225,000, plus one half of the balance of your estate. The rest of your estate split equally among all your children.

If you have no spouse, or surviving descendants, your estate goes to other surviving relatives. State law lists the order of inheritance as follows: parents, brothers and sisters, nieces and nephews, grand nieces and nephews, grandparents, descendants of grandparents, and then more remote relatives. The State of Minnesota receives your assets if you leave no living relatives.

If you leave behind minor children and have no guardian in a will, a court must choose a guardian. Ask yourself: Is that a decision you want someone else to make for you?

Having a judge decide who will raise your children can be emotionally wrenching for other family members. Also, court-supervised guardianships entail extra cost. Avoid the upset and expense by naming a guarding in you will.

Finally, bear in mind that if you have no will, the court will appoint a personal representative to administer your estate. Having a will allows *you* to choose this person. Also, you can stipulate in your will that the personal representative need not post a surety bond, thus saving money for your estate.

WHAT TYPES OF PROPERTY PASS TO YOUR BENEFICIARIES OUTSIDE OF A WILL?

These include:

- Survivorship marital property goes directly to a surviving spouse. An example would be a house that is owned by both spouses.

- Property that is jointly owned goes to the surviving owner(s).

- Life insurance proceeds and funds in IRA's and other retirement plans – go directly to the beneficiaries you listed on the appropriate forms.

- Transfer on Death (TOD) and Payable on Death (POD) assets and accounts – go directly to the beneficiaries named on the account or deed.

If all your property falls into the above categories, *and* you have no minor children, you might think you have no need for a will. You may be right. On the other hand, a will may still be wise.

For example, you and your spouse, the other joint tenant, or your beneficiary could die at the same time, or that person could die before you. A will would allow you to name alternate beneficiaries.

WHAT MAKES A WILL LEGAL?

Any person who is at least 18 years old and is of sound mind may make a will. To be valid, your will must be in writing, and you must date and sign it. At least two witnesses also must sign the will. Notarization is not a requirement, but is recommended.

CAN I WRITE MY OWN WILL?

Yes, if you comply with all of the requirements to make your will valid. But if in creating your will, you encounter any questions or complexities you don't understand, it's a good idea to see your attorney. Remember, this document must spell out all the conditions for transferring your assets. And, if you have minor children, it names their guardian.

A will is an important document. You'll want to be sure it correctly expresses your wishes and that it's legally enforceable. A lawyer can give you advice about not only your will, but other aspects of estate planning you might otherwise overlook. We'll discuss some of those later.

HOW DOES SOMEONE CHALLENGE MY WILL?

A person can attempt to prove in court that:

- You were under duress or undue influence when making your will;
- You were incompetent or unable to understand the results of your will when writing it; or
- Your will does not meet the requirements that make it valid, as listed earlier.

HOW CAN I CHANGE MY WILL?

You have two options. You can simply write a new will, which automatically replaces an older one. Or you can add a supplement, which is called a codicil. For a codicil to be valid, it must satisfy the same legal requirements as those mentioned for a will.

WHERE SHOULD I KEEP MY WILL?

Place your will where it is safe from theft, fire or other damage. A safe-deposit box is one possibility. You may also deposit it with the probate registrar for your county.

Be sure your personal representative knows where your will is. Some people also give a copy to their personal representative. You'd want to do this, for instance, if you include funeral preferences in your will. Usually the reading of the will doesn't happen until after a funeral. So you'd want your personal representative to have a copy on hand, to be able to carry out your funeral wishes.