

DO I NEED A WILL?

What Is A Will? Will is a legal document that describes how you want your property and belongings to be disposed of when you die. It tells the world “who gets what.”

Do I Need A Will or in the Alternative, Is A Will Necessary?

In our African community, the moment someone mentions a will, the first thought that comes to mind is, do you want me to die? We must dispel those thoughts because I believe the benefits of having a will outweighs the cost of not having one.

The primary benefits of a will are:

1. To Provide Individual Preference for Distribution of Assets

The intestate provisions discussed below are rigid and predetermined and may not reflect the desires of the testator. A will also provides the opportunity to make specific bequests to individuals or charities, to make unequal bequests to legatees, and to deal with particular assets or concerns (e.g., a child with disabilities).

A testator is the person making the will.

2. To Provide Individual Choice of Personal Representative

Maryland law establishes a priority for the appointment of personal representatives which may not be the desire of the testator. This can be overcome by designating a personal representative (and successor personal representative(s)) in a will who then has the highest statutory priority. For example, the intestate order of priority may grant the surviving spouse and children of the intestate decedent the equal right to serve as personal representative. There may be a dispute among these individuals as to who should be appointed; or none of these individuals may be suited to serve in that fiduciary capacity.

3. To Provide Efficient Distribution to Minors

Property not otherwise distributed in trust for minors creates a problem for the personal representative since the minor cannot hold title to property. A minor in Maryland is a person who has not reached the age of 18.

The personal representative has several statutory solutions to the problem. The statutory solutions are at times contradictory. The best statutory solution depends upon the nature of the property being transferred and the nature of the transaction. As a general rule, transfers of property from a personal representative to a minor that exceed \$10,000 in value require a court order. The best solution is a specific designation, in the decedent's estate planning documents, of a trust as recipient of the minor's property or a custodian under the Maryland Uniform Transfers to Minors Act (UTMA).

4. To Provide a Priority for the Entitlement to Appointment as Guardian

Although a guardian must be appointed by a court, a will provides the opportunity for the testator to determine who will be appointed as guardian of minor children. It has been suggested that this may be the primary benefit of a will for individuals with minor children and a small estate.

5. To Facilitate the Probate Process

The probate process can be streamlined by including certain provisions in the will:

- a. Payment of funeral and burial or cremation expenses without order of court;
- b. Definition of proper funeral and burial expenses to be paid, such as perpetual care of grave;
- c. Appropriate procedure for distribution of tangible personal property and allocation of costs of distribution;
- d. Determination of who will bear the costs of inheritance tax or estate taxes on probate and non-probate assets;
- e. Clarification as to identification if the decedent has property titled in different names or aliases;
- f. Expansion of fiduciary powers, especially as applied to trusts;
- g. Right to continue to operate unincorporated business for a period beyond four months; and
- h. Provide order of presumed death in a simultaneous death situation.

6. To Provide Some Protection from Estranged Spouse

A spouse's intestate share is generally a little more than one-half of the decedent's property. If there is a will, the spouse's elective share is only one-third of the estate if there are surviving issue (if there are no surviving issue, then the spouse's elective share is one-half). A testator can also defeat an estranged spouse's statutory right (assuming no valid separation agreement specifically waiving same) to serve as personal representative which would have been applicable had the testator died intestate.

7. To Provide for the Definition of the Testators Family

By defining the members of the testator's family members in the will, the testator can expand or limit the beneficiaries under the will. For example, the ten "descendants" and "children" can be precisely defined in a blended family.

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