Planning Your Will

Where Local Good Grows

Hendricks County Community Foundation

Creating a Personal and Effective Will

Your will is one of the most important documents you will execute during your life. While you are alive, it lies dormant. You can change or revoke it, and it has no effect whatsoever on your financial, business or personal circumstances. But at death, your will becomes exceedingly important. It will be submitted to a court, and once accepted as valid, its terms will control the disposition of the estate you have spent a lifetime building.

Certainly, your will can have a profound effect on the financial well-being of family members, friends and charities. This unique document will be a permanent reflection of your personal life values and your love and concern for family, friends and community.

Key Elements

Whether your will is simple or complex, it is first and foremost a legal document. To be effective, it must meet the requirements of state law. But your will can be much more than a legal document. It can contain a final message that reflects your personal beliefs—a way of leaving a rich legacy that others can remember you by.

Legal Requirements

Of course, every state has different rules, but there are some typical requirements. The will should be:

- In writing (including a statement that the document is the testator's last will and testament) and signed by the person executing the will.
- Executed by a person who is mentally competent when the will is written.
- Signed in the presence of two disinterested witnesses, who also sign the will to acknowledge the testator's signature and the fact that it is, in fact, the testator's last will and testament.

Answers to Commonly Asked Questions

Do I need to change my will when I move to a different state?
Many states will admit a will to probate if it meets the requirements of the laws of the state where the testator resided when the will was executed. But some states will not recognize certain types of wills, or wills executed in a certain manner. Remember—different rules may apply depending on where a person resides, where a person dies, or where property is located (e.g., a vacation home in another state). It is a good idea to check with a local attorney to make certain your estate plan remains intact after a move.

Who should witness my will?
Ideally, you should choose a person who has no interest in the will (i.e., is not a beneficiary, trustee or executor) and is not related to you either by blood or by marriage. You should also look for a person of good character who is likely to outlive you and remain in the state.

Can I use a fill-in-the-blanks type of will to avoid attorney costs?
We recommend that you consult an attorney. After all, even a small mistake in the drafting, execution or witnessing of a will can make it completely invalid.

Amending and Revoking

You can change your will easily and inexpensively by executing a codicil—a separate document executed with the same formalities of a will. In most cases, a codicil is used to make minor modifications to an existing will. The old will remains intact and is simply amended by the codicil. If you need to make major changes, you'll probably want to execute a completely new will. Usually, a new will automatically revokes all previously executed wills.

Restrictions on Asset Disposition

In most cases, you have the freedom to dispose of assets to beneficiaries of your choosing, but state laws do impose some restrictions. The best example is the rule that a married person cannot disinherit a spouse. If a will makes no provision for the spouse (or makes inadequate provision), the spouse generally can elect to take a statutory share of the estate, regardless of the actual terms of the will—typically one-third or one-half of the value of the estate. Children, on the other hand, generally do not have an absolute right to receive any part of the estate under a will.

Practical Considerations

Let's turn now to the practical side of a will. This is an area where the person making the will, rather than the attorney, has primary responsibility.

Making a Gift in Your Will
Chances are good that your present will leaves specific sums of money to one or more designated beneficiaries and then directs that all the rest of your estate be divided among other designated beneficiaries. Here are the most common forms of gifts.

- **Percentage of value.** A percentage-of-estate-value gift allows all beneficiaries to share in increases or decreases in the value of the estate after the will is executed.
- **Contingent gifts.** What will happen if a beneficiary named in your will dies before you? Your gift may go to an unintended relative or lapse and pass to your residual estate. Either way, your objectives may be frustrated. The best approach is to name contingent beneficiaries to receive a gift if the primary beneficiary predeceases you.
- **Specific gifts.** Your will can leave specific real or personal property to a beneficiary. Keep in mind, however, that if the property is not in your estate at the time of your death, the gift may become void and the beneficiary will not receive any part of your estate.
- **Residuary gift.** Any specific gifts provided in your will are paid first. Whatever is left after all specific bequests, taxes and estate costs have been paid can be left to beneficiaries out of the residuary estate.

Selecting the Executor

Many people name a spouse or a child as the executor of their estate. Unless the estate is large or complex, this is generally a good decision. (In actual practice, much of the work is done by the attorney.) However, depending on the nature of your estate, there may be good reason to nominate a friend as your executor, or to name a bank or trust company to settle your estate.

In choosing an executor, keep in mind that settling an estate can be a complex and demanding task—collecting and preserving assets, settling claims, collecting debts, filing tax returns, probating the will and attending court proceedings. In most cases, all this is accomplished in one or two years, an accounting is filed, the estate is distributed to your designated beneficiaries, and the executor is discharged.

The Art of Planning an Effective Will

There are five basic steps to making a new will or reviewing an existing will.

1. Make a comprehensive listing of assets (including personal effects) and liabilities. Write down the income each asset produces and other characteristics of each asset.
2. Make a list of your objectives—what you want your estate plan to accomplish, rather than how much each beneficiary should receive. For example, you may want to ensure financial security for your spouse, protect a child against a temporary financial misfortune, or ensure a grandchild's education.

3. Seek the advice of an attorney.
4. Make your own decisions. It is your estate and you have a right to dispose of it in any way you choose.
5. Talk about your decisions with your attorney, then rely on the attorney to draft a will that will accomplish your objectives.

A Final Word

Traditionally, wills have been extremely personal documents. People often emphasized their personal philosophies and explained the motive behind each of their decisions. In a way, the pendulum has swung in the other direction, with people today often using largely impersonal "boilerplate" wills. Of course, there is nothing wrong with an impersonal will that clearly sets out what the testator wants, but there is something to be said for leaving a warm and enlightening message to family and friends.

If you have something important to say to your loved ones, you can also write an "ethical will." An ethical will has no legal standing, but is simply a document that outlines the values that are important to you.

Another tangible way to leave a legacy is to include a charitable gift in your will. Beyond benefiting society, gifts in your will can be a powerful means to realize planning goals.

We would be happy to help you explore gift options that meet your personal planning and philanthropic goals.

OUR MISSION:

The Hendricks County Community Foundation partners with generous people to realize their charitable goals while addressing community needs in meaningful and lasting ways.

OUR VISION:

Hendricks County is a vibrant, giving community.

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Hendricks County Community Foundation

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