

Dissecting the contents of a Will

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For many people, the first thing they think of when they hear the words “estate plan” is a Will. And for good reason, as it’s the cornerstone of any estate plan. But do you know what provisions should be included and what’s best to leave out? The answers to those questions depend on your situation and may depend on state law.

Understanding the basics

Typically, a Will begins with an introductory clause, identifying yourself along with where you reside (city, state, county, etc.). It should also state that this is your official Will and revokes any prior Wills.

In addition, a Will generally explains how your debts and funeral expenses are to be paid. The provisions for repaying debt generally reflect applicable state laws. Years ago, funeral expenses were often paid out of the share of assets going to an individual’s children, instead of the amount passing to his or her spouse under the unlimited marital deduction. However, now that the inflation-adjusted federal gift and estate tax exemption has increased to \$11.7 million for 2021, this may not be as critical as before.

Don’t include specific instructions for funeral arrangements in the Will. It’s likely that your Will won’t be probated before the funeral. For example, in New Jersey the Will cannot be probated until 10 days have passed from the decedent's death. Instead, spell out your wishes in a separate letter of instructions, which is an informal letter to your family stating your funeral and burial/cremation wishes.

Bequests

One of the major sections of your Will — and the one that usually requires the most introspection — is the dispositive provision that distributes your assets to named beneficiaries.

Outside of your residuary estate (which disposes of the balance of your assets), you’ll likely want to dispose of tangible personal property (e.g., automobiles, clothing, household furniture, furnishings and jewelry) to various beneficiaries.

If you’re using a trust to transfer property, make sure you identify the property that remains outside the trust, such as furniture and electronic devices. Typically, these items won’t be suitable for inclusion in a trust.

If your estate includes real estate, and you want to make specific bequests of one or more real estate properties to specified beneficiaries, include detailed information about the property and identify the specific beneficiaries to receive each parcel. And also determine whether or not such beneficiary should receive an amount equal to the proceeds of sale if that parcel is sold prior to your death.

Once you've covered tangible personal property and real estate, move on to other assets, such as cash and securities. You might want to make specific bequests of securities or bequests of a specified dollar amount of cash to named beneficiaries, including charities.

Finally, the residuary clause of the Will disposes of the remainder of your estate not otherwise disposed of by your Will. Accordingly, assets that aren't otherwise bequeathed under prior provisions of your Will go to various residuary beneficiaries whom you desire to receive the balance of your estate, often the surviving spouse, children, grandchildren or a combination of family members.

Addressing estate taxes

The Will usually will address estate taxes. Remember that this isn't necessarily limited to federal estate tax; it can also apply to state death taxes (e.g., state estate taxes and state inheritance taxes). For example, estate taxes might be paid out of the residuary estate that remains after assets have been allocated to your spouse. It's important that the tax payment provision be thought about and properly allocated among the beneficiaries.

Naming an executor

Name an Executor — usually a family member or financial institution — who is responsible for administering your estate. Of course, this should be a reputable person whom you trust. Make sure you also select one or more successor Executors if the first choice is unable to perform these duties. Importantly, discuss beforehand with each proposed Executor and successor that you would like to appoint them. Make sure they are willing and able to undertake the position and responsibilities of serving as Executor, and inform them in general as to what your estate will consist of (i.e., the assets you own), where the assets are located or held, and where you keep your important documents and financial information so they can be accessed.

Naming a trustee

If one or more testamentary trusts are created by the Will for the benefit of one or more beneficiaries (e.g., children, grandchildren, etc.), name a Trustee - usually a family member or financial institution - who is responsible for administering those trusts. Again, this should be a reputable person whom you trust, but this person should be financially savvy to make proper investments considering the trust's purpose and understand what the trust provides as to distributions of income and principal to beneficiaries. Make sure you also select one or more successor Trustees if the first choice is unable to perform their duties. Importantly, discuss beforehand with each proposed Trustee and successor that you would like to appoint them. Make sure they are willing and able to undertake the position and responsibilities of serving as Trustee (which could be for a long duration), and inform them in general as to the trust purpose, the assets of your Estate that will be used to fund it, and your intent regarding trust administration and trust distributions to beneficiaries.

Naming a guardian

A Will should also be used to name a Guardian for your minor children (i.e., under age 18). Many times this is a very difficult decision for a parent to make and holds up the Will's drafting until the decision is made. To be on the safe side, name one or more backups (successors) in case your initial choice is unable or unwilling to serve as Guardian or predeceases you. Importantly, discuss beforehand with each proposed Guardian and successor that you would like to appoint them. Make sure they are willing and able to undertake the position and responsibilities of serving as Guardian, which involves raising your children, providing a home life and instilling in them the values that you would convey if you were alive to do so.

Turn to us

Regardless of your age, health and net worth, if you want to have a say in what happens to your spouse, children and your wealth after you're gone, you need a Will. Please contact us to draft your Will and, if the value of your estate will be subject to federal estate tax, to discuss tax-saving estate strategies that could be used.

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