

10. How long is a will valid?

A properly drawn and executed will remains valid for your entire life unless it is changed or revoked. However, changes in your life circumstances (marriage, divorce, or even a substantial change in the size of your estate) can make it necessary to draft a new will. All changes in circumstances require a careful analysis of the provisions of a will and may make it wise to consult your legal assistance attorney.

11. Does a will increase the cost of probate?

No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the federal and state tax laws. A will can save money for you and your family if it is properly drafted.

12. What happens if I die without a will?

If this happens, your property will be distributed according to a formula fixed by law, and you don't have any say as to how your property will be divided. A spouse and children may have to share. If there are any children under 18, the property cannot be delivered to them and a guardian must be appointed by the court for them. This adds considerable expense that might have been avoided with a will, and denies you the opportunity to name a guardian for your children. Grandparents, other family members and godparents do not automatically receive custody of children. A judge will decide the custody with limited information.

Updated September 2024 by Ms. Amy Bipes, Esq.,
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13. Is a life insurance program a substitute for a will?

No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

14. What if I have other questions or specific problems I want help in solving?

Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer the many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.



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**Will and Estate
counseling by
appointment only.**

(785) 239-3117

YOUR LAST WILL AND TESTAMENT



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What is a Last Will and Testament?

A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your children after your death. A will takes no effect until your death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.

1. Can my last will and testament be changed?

Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document which must be signed and executed in the same manner as your will. *NEVER MAKE ANY CHANGES TO YOUR WILL* without consulting an attorney. Changes typed or written on the original will may make it invalid.

2. Is my state of legal residence important regarding my will?

When a person dies, their residence address is given on the death certificate. That determines the state law which applies. Your legal residence is the state where you have your true, fixed and permanent home. It is where, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, motor vehicle registration, driver license and so on, are some indicators of your state of legal residence. If you are a naturalized U. S. Citizen, you are considered to be a resident of the state in which you were naturalized.

3. What is my estate?

Your estate consists of all of the property and personal belongings you own or are entitled to possess at the time of your death. This includes real estate and personal property, cash, savings and checking accounts, stocks, bonds, retirement accounts, automobiles, etc. Although the proceeds of insurance policies may be considered part of your estate in some states, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy will normally pass directly to the beneficiary you designated with the insurer.

4. To whom should I leave my estate?

A person or charity who receives property through a will is known as a *beneficiary*. You may leave all of your property to one beneficiary, or you may wish to divide your estate among several. In any event, you should decide on at least two levels of

beneficiaries: *PRIMARY BENEFICIARIES* -- those who will inherit your property upon your death; and *SECONDARY BENEFICIARIES* -- those who will inherit your property in the event the primary beneficiaries die before you. You may even want to select a third-level beneficiary in the event that both the primary and secondary beneficiaries die before you or with you in a common accident.

5. Can I dispose of my property any way I want?

Almost-- but not quite. For example, in North Carolina, a married person cannot completely exclude a spouse as a beneficiary of the estate. Generally, you are free to give your property to whomever you desire. However, most states have laws which entitle spouses to at least part of the other spouse's estate. Sometimes the share is greater the longer the spouses were married. This *statutory share* can range generally from 1/3 to 1/2 of the other spouse's estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. Usually, the spouse must contest the will if they want to claim a statutory right. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance attorney.

6. Should my will name a guardian for my children?

Yes. A guardian should be named in a will to ensure that the children and their estates are cared for in the event that both parents should die. Your guardian should be chosen with extreme care as this person will be charged with the duty of raising your children, including their well being and managing their legal affairs. Do not automatically assume that your parents or any other relative will be suitable guardians. Such factors as the age of the guardian, age of the children, religion, social status, economics, and relation of the proposed guardian to the children, if any, should be considered in making your decision. Additionally, a substitute guardian should be chosen with the

same care as the primary guardian just in case the primary guardian cannot serve in that capacity.

7. What if my spouse and I disagree about who should be the guardian?

It depends. The guardianship provision is normally effective when both parents die at or about the same time. For example, if the husband's will nominates his parents and the wife's nominates her parents and both husband and wife die at about the same time, *the court* will have to decide who will be the children's guardian. This can cause undue hardship and considerable unnecessary expense. On the other hand, if husband and wife die several years apart, the guardianship clause in the will of the second spouse to die is the only one that would be effective.

8. What is an executor?

An executor (or personal representative) is the person who finds and gathers your property, manages and settles your estate according to the will. You should also consider naming a substitute executor in case the first named executor is unable or unwilling serve. By the wording of your will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate.

9. What if I want to set up a trust?

A trust permits you to name an individual to hold certain assets of your estate for the benefit of minor children, or other named people. Consult with your legal assistance attorney for further details on whether establishing is a trust is best for you. The Legal Assistance Office can set-up a simple trust in your will that would hold money for the benefit of children, and will discuss options for funding the trust you create. If you are wanting to organize a trust to manage and hold all your property now, ask the legal assistance office for a list of private attorneys who do estate planning with whom you may consult.