

Understanding the contents of a Will

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You probably don't have to be told about the need for a Will. 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.

Basic provisions

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.

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 NJ, 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.

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 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, proving a home life and instilling in them the values that you would convey if you were alive to do so.

Cross the t's and dot the i's

Your attorney can help you meet all the legal obligations for a valid Will in the applicable state and keep it up to date. Sign the will, putting your initials on each page, with your signature attested to by witnesses. Include the addresses of the witnesses in case they ever need to be located. Don't use beneficiaries as witnesses. This could lead to potential conflicts of interest. Please contact us with questions.

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