Will

The foundation of every estate plan

What is a Will?

A will is a legal declaration of how we want our property administered and distributed at death. An essential part of every estate plan, a will is the principal document for transferring wealth at death.

Because distributing property through a will is considered a privilege granted by the state, a will should be prepared by a qualified attorney. The more assets a person has and the more complex the situation, the more important it is to have a will drafted by an attorney who specializes in wills and who will take the time to understand the client's situation and objectives.

Standardized or "statutory" wills, which people can prepare on their own, may be valid in some states, but anyone relying on one without having it reviewed by a competent attorney is running a serious and totally preventable risk.

Without a valid, up-to-date will, the state decides how a person's assets are distributed at death. In moderate-size or large estates, dying *intestate* – without a will – may result in higher taxes.

What's more, some state intestacy laws divide a person's assets among the surviving spouse and children, even if the deceased might have wanted everything to go to the spouse. On the other hand, intestacy laws in other states require that a fixed percentage of assets be distributed to a surviving spouse, which can lead to the inefficient or unfavorable use of the marital deduction.

Similarly, since a will must go through probate, some estate distribution goals can best be met by having a will direct funds to others in trust, rather than outright, thus avoiding the expense, delays and public nature of the probate process.

In most cases, the original of a will should be left with the attorney who prepared it, or with a responsible, trusted individual, not in a safety deposit box that might be sealed temporarily at death. Copies can be safely kept at home and, in some cases, may be filed with the probate court.

Without a valid, up-to-date will, settling most estates is more complicated and more costly.

A simple will costs a few hundred dollars, yet even though a will is the most basic estate planning tool, most Americans die without one.

Executors have several primary responsibilities:

— Administering the estate and distributing assets to beneficiaries

— Paying the estate's debts and expenses

— Ensuring that all life insurance and other benefits are received

— Filing tax returns and paying appropriate federal and state taxes

What can a Will do?

A will makes our intentions known and may save our heirs substantial legal and court costs and needless delays. What's more, with a will forming the foundation of an estate plan, various other wealth transfer strategies can be put in place. Let's look at just four key provisions a will can include:

Selecting a Guardian for Minor Children

A will enables parents to select a guardian for their minor children if both parents die. This decision takes careful thought: a guardian should be someone who is personally trustworthy, prudent and impartial, as well as financially competent and able to handle fiduciary obligations. Moreover, parents should select someone whose ideals and values coincide with their own and who would willingly accept this responsibility.

Creating Trusts to Manage Assets

A will can direct the disposition of the decedent's estate. However, to meet other important goals – including funding children's educations, providing for elderly parents, sheltering income or securing various tax advantages – provisions can be made for the creation of one or more trusts.

Many different types of trusts are used in estate and business planning.

Basically, unlike a will that functions only at death, a trust can hold assets during the "grantor's" lifetime and enables people to plan for incapacity. Properly drawn trusts can also avoid the costs and delays of probate at the grantor's death and provide an effective mechanism for managing or distributing the grantor's assets after death. Further, since the details are not a matter of public record, trusts guarantee privacy.

Appointing an Estate Executor

Anyone with a valid will can nominate the executor of his or her estate. In fact, if an executor or an alternate has not been appointed to manage the distribution of property mentioned in a will, the court is legally required to appoint an *administrator* to perform this function. Generally, a court-appointed administrator's first duty is to the court, rather than the best interests of the decedent. This result can and should be avoided by the valid appointment of an executor in the will.

Executors can be individuals or corporate entities; two or more coexecutors can also be named. An individual executor can be a spouse, family member or friend who understands the decedent's personal and business situation. However, the lawyer who wrote the client's will should not accept a fiduciary role under the will. Nor should someone be appointed who is likely to be so distraught at the decedent's death as to be unable to carry out these important responsibilities.

A corporate executor (bank trust department or trust company), may be a prudent choice in larger or more complicated estates; though corporate fiduciary fees can be prohibitively high for relatively small estates.

Coexecutors can provide continuity if one or the other dies, becomes ill or can otherwise no longer serve as a fiduciary. Since the unanimous agreement of coexecutors is often required to bind the estate, however, disagreements, a disability or even a brief illness can cause delays or sour the arrangement.

To avoid these situations, the decedent's will can authorize one coexecutor to act in the event of the disability or absence of another, or provide that a successor executor be named in case a coexecutor cannot serve.

A valid, up-to-date will lets us control our estates by:

— Appointing an estate executor
— Designating beneficiaries of our assets
— Selecting guardians for minor children
— Making specific bequests
— Paying debts and personal expenses
— Authorizing business continuation plans
— Creating trusts to manage our assets.

Authorizing Business Continuation Plans

A small business does not have to die with its owner(s). A number of highly effective business continuation plans are available to small-business owners and entrepreneurs. Yet, if specific provision is not made in the decedent's will authorizing the implementation of these plans, an executor or trustee may have no choice but to liquidate a business interest that passes into the owner's probate estate.

Including this provision in a will may be simple enough, but overlooking it can have devastating and far reaching results.

Do Both Spouses Need Wills?

Even if most of a married couple's property is jointly owned with rights of survivorship, both spouses need individual wills for several reasons, including:

- Since spouses probably don't know which one is going to outlive the other, both wills should be set up for the best advantages, no matter what happens.
- Both spouses will be able to make specific personal bequests of personal assets such as family heirlooms, collections and mementos.
- Spouses may have separate charitable interests that they can support through their individual wills.

Joint wills between spouses do not save money, may be inappropriate because the spouses' situations change, and could potentially cause problems leading to unexpected legal difficulties.

Living Wills

Through a "living will", "advanced care directive" or "durable power of attorney," people can spell out the medical care they want if they become incapacitated and are unable to speak for themselves.

It's important to note that these documents do not give anyone the authority to end the person's life; rather they're intended to prevent medical professionals, hospital administrators, lawyers or relatives from maintaining life by using artificial means if that's not what the patient would want if he or she could make the decision.

What's more, these documents only go into effect if the person becomes incompetent, and they can be revised or revoked at any time before then.

Changing or Updating a Will

Estate planners generally recommend reviewing wills once a year or whenever tax laws change. It also may be necessary to revise a will after natural or unexpected changes in the person's life or family, such as births, deaths, divorce or remarriage.

Because change is inevitable, it's a mistake to lock our wills into distributions that cannot be undone. As time goes by, we may need to sell property that is part of a bequest, or find we're able to give more to others or charitable organizations. These situations and countless others like them may call for changes in our wills or other portions of our estate plans.