

## Why Exactly Do I Need A Will?

Most of us at some time in our lives have been told, by a friend, relative, or professional advisor, that we should get a Last Will and Testament. Few have any real idea of exactly why we would want to take the time or spend the money to do so, and therefore few do. Yet important reasons exist why someone with children, real estate, or even someone with neither would want to take the time and expense to execute a Will and other important documents. The purpose of this article is to explain why in simple and straightforward terms.

This article will flow best by starting with an explanation of what happens to the property of a person in Texas who has a properly drafted and executed Will at the time of their death. That person, through their Will, has left evidence of how they wish their estate to be distributed, and will have named an "Executor", a person designated to be in charge of carrying out those wishes. In a process known as an "Independent Administration", the named Executor will file an Application to probate the Estate with the Court and will attend a short hearing at the probate court to "prove up" the Will, accomplished by answering a few basic questions in front of the Judge. The Executor will then receive "Letters Testamentary", which allow them to manipulate the estate holdings in order to gather the assets of the estate, pay the debts of the estate, and distribute the remainder in the manner required by the Will. Finally, the executor will file an "Inventory" and arrange for a publication in the local paper. This is a simplified version of the probate process, but these are essentially the steps involved. If the estate is complex, the executor can be reasonably compensated by the estate for their time and expenses.

When someone dies without a Will, the state of Texas has a system of distribution for them. In a process known as "Dependent Administration," Texas statutes and laws determine how such estates will be distributed. The distributions made by these laws may not be far from what many people choose as their distribution in prepared Wills. However, there is little flexibility in distribution under these laws. As an example, these statutes would give an equal amount of an estate to a successful and financially secure child as they would to a disabled minor child. A person who took the time to make out a Will might wish something different. Depending on the circumstances of the life of the deceased individual, certain types of real estate and property may have to be split between a surviving spouse and children, which may cause problems, and might not be the way the deceased individual would have chosen if they had drafted a Will.

But even more important reasons why someone would want to avoid such a distribution per state law include the costs incurred to the estate in the administrative process and the delays in distributing the estate proceeds to their children and heirs. If you have not left instructions on how you want your estate distributed and who will administer or supervise that process, the probate court will supervise the process. Each step of the gathering of assets, payment of debts, distribution of remaining assets, and other details of administration of the estate will need to be formally presented to the Probate Court

for the Judge's approval. The Probate Court may need to appoint an attorney to administer the estate, to mind the interests of "unknown heirs" and make sure no one is overlooked and left out of the distribution, and to represent the interests of minors in the process who are legally unable to speak for themselves.

All of these requirements are in place to protect the interest of the deceased individual and their heirs, but you can see that protecting such interests can become an expensive and time consuming process. Many a medium or smaller size estate can be chewed up or at least significantly depleted by the failure to make simple estate plans, such as a Will. You may see the logical error that many people fall into when they claim that their estate is "too small" to worry about making formal plans, when they are actually the persons most likely to have their estate significantly reduced or wasted by the process of trying to administer its distribution without a Will. Persons with children will have an even stronger desire to see as many assets as possible survive the process of distribution to benefit those children. Persons with real estate or other significant assets that require transfer of title will recognize that a properly named Executor will be able to complete such transfer much more efficiently, more quickly, and at less cost than a court supervised procedure.

Additional important benefits exist for a properly planned estate. Parents can nominate Guardians for their minor children, giving the courts much appreciated guidance as to their wishes in the event of the death of both parents. A Will can contain a "Contingent Minority Trust," which would dictate that assets left in a Will to a minor would be held in trust for that minor, with the deceased person having chosen who should be the "Trustee" or caretaker of those funds, and at what age the funds should be turned over to the minor, rather than the minor automatically taking the funds at the age of eighteen. Parents may understand that a child turning eighteen may not be prepared to wisely handle a lump sum inheritance. "Spendthrift clauses," "No Contest clauses," and other Will provisions can be inserted to protect the wishes of the deceased person.

Other important documents that can be critical to your planning are Powers of Attorney and Directives. A Statutory Durable Power of Attorney allows the person of your choosing to make decisions for you about your property and finances if you are temporarily incapacitated. Similarly, a Medical Power of Attorney allows the person of your choosing to make decisions such as surgery, treatment, and medication if you are temporarily incapacitated. A Directive to Physicians, also known as a Living Will, allows you to state your wishes about appropriate measures to be taken if you are permanently and totally incapacitated.

I hope that this article has explained, in a simple and straightforward way, the basic instruments of estate planning, and why anyone would be interested in completing such documents. Please feel free to phone or e-mail me at my office with any questions you may have.