



HOW TO  
PROTECT  
YOUR  
RIGHTS  
WITH A WILL

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**S**ome people view the act of preparing or updating their will as important, but not essential. For most, however, this is not the case. The lack of a will and other up-to-date estate plans can result in a legacy of heartache and confusion for loved ones.

This booklet outlines the basics of what you need to know about a will. The fact is, almost everyone needs a will to claim important rights to which we are all entitled.

Read on to find out how much you, your family and loved ones can benefit from having a well-planned will.

### **A right to be claimed**

**I**n our society, private ownership of property is everyone's right. Along with the right to own property, however, comes the duty to make plans to distribute your property at the end of your lifetime. A will can be very important in this regard since it contains instructions on how you would like your property distributed when you no longer need it.

While we all pay a certain amount in state and/or federal taxes during lifetime and possibly at death, we are generally free to use the rest of our property and earnings as we choose. Most individuals devote the majority of their resources to caring for themselves and their families.

After setting aside funds to provide for their loved ones' future economic well-being, many also choose to share other income and/or assets with charitable causes they have supported during their lifetime.

When you exercise your right to prepare a will according to law, your wishes will be respected and your property will pass as you desire to those named.

However, if you choose not to have a valid will like more than half of all Americans, you may leave your heirs a legacy of neglect, delays and unnecessary costs at a time when they are least equipped emotionally and perhaps financially for such an “inheritance.”

## What happens without a will?

If you don't have a will, your state must step in to distribute your property. A probate court will transfer your property to new owners according to all-purpose plans set out by your state legislature, directing how your property will be distributed, regardless of what your wishes are or the needs of your loved ones.

*Equal treatment for heirs.* Under the state's plan, your assets will be distributed to your heirs strictly according to their relationship to you. If you have children, your spouse may receive only part of your property. Your children will share in your assets in a predetermined percentage set by the state. There are few, if any, exceptions.

If your children are of legal age (18 in most states), they will receive their share immediately, whether or not they are mature enough to manage it wisely.

*What about others?* Under your state's will, special friends or others outside your family will not receive anything. For example, even if it was common knowledge that you wanted your closest friend to receive certain property, there is no legal guarantee that person will receive it unless your wishes are stated in a will.

*Unnecessary expenses.* Where there is no valid will, a court will appoint a person to settle your affairs. Known as your "personal representative" or the "administrator" of your estate, the person chosen by the court may not be the individual you would choose. And the state will not trust that person to administer your estate. The administrator will be required to purchase a bond to protect against theft or misuse of your property. The bond fee will be paid from your estate. The court-appointed administrator will also be entitled to collect fees for efforts in administering your estate. There may also be unnecessary costs for accountings or bonds that could possibly be waived if there is a will.

*Guardian decisions.* If you should be survived by minor children in need of a guardian and do not recommend the person you would prefer, a court will appoint one. This person is usually a relative, but may not be the one you would have chosen.

The court-appointed guardian will then care for your children under the supervision of the court. Annual accountings of property must be filed in most states, and permission

of a judge may be necessary in order to make expenditures.

*Rigid division of property.* Your property will be distributed in as nearly equal shares as possible. If you own a business, real estate, a collection of value or even family heirlooms, it may be necessary to divide the property in ways that may diminish their value.

If no division is possible, or the judge finds it advisable, such treasured items may be sold to the highest bidder. Failure to plan can lead to estate sales that may result in reduced inheritances for your heirs.

## How a will works for you

**B**y having your will prepared by an expert, you can avoid guesswork, expense and confusion. In even the simplest will, you can exercise your right to:

1. **Name a person or institution you trust (your personal representative or executor) to handle your estate.** Since they will have most of the rights of ownership of your property for a period of time, the personal representative should be a financially responsible and trustworthy individual. If you think family disputes may occur, it may be advisable to name a neutral third party, such as a bank or trust institution.

2. **Relieve your estate from the expense of bonding that person.** Waiving bond may be wise and can result in savings for your estate. Weigh this decision carefully.

**3. Recommend a guardian for minor children.** This will give the court helpful guidance in making its decision. Again, choose someone you trust. Consider the age of the guardian relative to the ages of your children. It is a good idea to discuss this with the person you intend to name before taking this step.

**4. Dispose of your property with nearly total freedom.** You can leave certain properties to specific people. You may have the property divided or direct that it be sold and the proceeds distributed. Many people also enjoy making gifts to charitable interests they have supported during their lifetime.

***Property management.*** Trusts are very flexible and useful devices that can help serve your financial planning needs. Trusts may be created in your will.

Under a trust's terms, you transfer your property to a trustee. As the name implies, this should be a person or other entity you are confident will carry out your wishes. The trustee will then manage and distribute your property as directed in the instructions you include in the trust.

The people and institutions who benefit from a trust may be the same individuals who might receive property if the owner dies without a will. But if such heirs are not capable of managing the property they receive because of age, physical or mental handicaps or lack of financial responsibility, a trust can be of great value.

*Control over timing* Timing can be extremely important in the distribution of property. Young adults may not be prepared to wisely manage even modest sums of money. Under the terms of a trust created in your will, you can delay the distribution of property until a time you choose.

You can even delay distribution for the lifetime of another person. Many people choose to leave their property in trust for the benefit of a spouse, with the property distributed to children, other loved ones or charitable beneficiaries at the end of the spouse's lifetime.

*Tax benefits.* Given changes in our nation's tax laws in recent years, most Americans no longer need to worry about federal estate taxes. As a result it may now be possible to leave more to family, friends and favorite charities.\*

Keep in mind that some states impose taxes on much smaller estates than those subject to federal taxes.

Those with estates that are still subject to estate tax will be glad to know that unlimited amounts can still be left to your spouse or for charitable purposes tax free under federal law and the laws of most states.

Special types of trusts may also be created to provide additional income for a relative or friend for a period of time while eventually transferring the property to one or

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\*The exemption for federal gift and estate tax is \$11.58 million for 2020. See the Technical Advisory Section on Pages 12 and 13 for more information.

more charitable interests. In this event, the assets in the trust will grow tax free and the income from the trust can be taxed more favorably when your heirs receive it.

*Keeping up to date.* Just as a photograph captures a moment in time, a will records your wishes and desires when it is written. As circumstances change, so should the document.

Examples of events that may call for revising your will are a change in marital status, births or deaths of loved ones, a move to a different state, tax law revisions, a change in financial status and, most importantly, changes in the way you want to leave your property.

It is wise to regularly revisit the terms of your will and have it reviewed periodically by your attorney to make certain your wishes are correctly expressed.

It is also important to make certain that the terms of joint ownership arrangements, and the beneficiary designations of life insurance policies, retirement plans, bank accounts and investment accounts, are considered in light of the provisions of your will and other plans.

Federal and state tax laws change frequently. Check with your advisors for current amounts that are exempt from federal and state gift and estate taxation or for more information about other changes that may affect your plans.

Please contact us if we can assist you with the charitable dimension of your long-range estate and financial plans.

## Technical Advisory Section

The charitable bequest is widely known as a vehicle for property transfer and is the most common means of leaving assets to qualified charitable organizations and institutions at death.

### Begin with the basics

A will that includes one or more charitable recipients is basically no different from other wills. To be valid, the information it contains and the method in which it is executed must qualify under applicable state laws.

*The proper name:* Charitable entities may sometimes share the same or very similar names and may be located in the same city or state. When drafting a will that leaves property to a charitable entity, it is critical to correctly identify the intended recipient of the property. If in doubt, check with the organizations or institutions and request legal names and other identifying information. It may also be useful to include most recent known addresses.

*The use of the property:* As in bequests to individuals, testators often choose to specify a particular use for their bequests. What is known as precatory language may be used to express a preference, or wishes may be stated in such a way that leaves little room for the recipient to determine use.

Most charitable bequests are left to the charitable entity “for the general purposes of the organization” a number of years before the funds are received, and the needs of the organization may change in many ways. Most donors choose to allow maximum flexibility for the use of the funds bequeathed.

If a donor wishes to restrict the use of a bequest, it is in the best interest of all involved to discuss the intended use with authorized representatives of the charitable recipient before the execution of the will.

*Limits on the size of charitable bequests:* Some states may impose limits on the amounts that can be left to charitable beneficiaries in certain situations.

A spouse and/or children may be entitled to specific percentages of an estate which may not be encroached upon by charitable dispositions. Such restrictions rarely impose barriers in the typical situation, but state laws should be examined if a donor is contemplating one or more charitable bequests that amount to a substantial portion of their estate.

Other than the considerations outlined above, there generally are no limits on the amount of property that can be left for charitable purposes through a will.

## Choosing the form of the bequest

**A** charitable bequest may be structured in many ways. A person may choose to leave a specific dollar amount, particular real or personal property, a percentage of the estate, all or a portion of the residue of the estate following the satisfaction of other bequests or a combination of the above.

*A fixed dollar bequest:* In the case of a smaller bequest, it is usually best to simply state a specific dollar amount. This is particularly useful in the case of a highly liquid estate that will be reviewed on a regular basis.

If a person is considering a larger bequest or if the estate will be composed primarily of relatively illiquid assets, it may be best to choose another method of satisfying charitable intentions.

*A bequest of property:* A donor may choose to leave a particular real property—whether a home, farm or rental property—to a charitable beneficiary. It may be left outright, or a life estate may be granted to a surviving spouse or other relative or friend.

Great care should be taken to properly describe the intended property and the interest bequeathed if it is not the entire ownership interest. In the case of tangible personal property such as jewelry, automobiles and other assets, all aspects should be carefully considered before making such assets the subject of a charitable disposition. Such gifts may create disputes and unnecessary friction among charitable and noncharitable heirs.

A specific bequest of intangible personal property such as stocks and bonds may not be the best choice. The value may have increased or decreased to a point where it no longer represents the intention of the testator.

In the case of any gift of property, language should be included that expresses the wishes of the testator if the property has been disposed of prior to death.

*Bequest of the residue:* Perhaps the most common method of leaving charitable bequests is through residuary clauses.

After providing for significant others and friends, many testators will specify that all or a portion of the residue of their estate be distributed to one or more charitable organizations or institutions.

As a result, loved ones are cared for first and charitable wishes follow, if this is the testator's desire. Many people choose to leave a set percentage of the residue of their estate for specified charitable uses.

This approach offers a correcting mechanism in case the estate should unexpectedly increase or decrease in value.

## Tax considerations

**A**n unlimited amount of charitable gifts may be deducted from federal estate and gift taxes. See Internal Revenue Code section 2055(a). Check applicable state laws for restrictions that may apply.

*The marital deduction:* Some married people use trusts in their wills to take maximum advantage of the unlimited marital deduction. In the case of a life interest left to a spouse followed by a charitable disposition of the property, a combination of the charitable deduction and the marital deduction will effectively eliminate all tax at the federal level. See IRC sections 2523(a) and 2056(a).

*Gift and estate taxes:* The *Tax Cuts and Jobs Act of 2017* continued the trend toward reducing the impact of federal estate and gift taxes on personal estate

planning. The maximum federal estate and gift tax rate remains 40% for estate and/or gift taxes beyond the exemption amount. Effective January 1, 2018, the act doubled the estate and gift tax exemption amount to \$10 million for individuals and \$20 million for a married couple, adjusted for inflation since 2011. The exemption amounts for 2020 will be \$11.58 million for singles and \$23.16 million for married couples. These amounts will continue to be indexed for inflation in future years. Check for latest amounts.

As in the past, unlimited amounts can still be transferred for qualified charitable purposes free of estate and gift taxes. The reduction of estate and gift taxes at the federal level on amounts left to family and other loved ones may now mean that more is available to make charitable gifts during lifetime and at death by those who are charitably inclined.

The federal gift tax was reunified with the estate tax by legislation enacted in 2011. The maximum amount that can be given to noncharitable recipients during life was increased in 2011 from \$1 million under prior law to the same amount exempt from estate tax (see above). The gift and estate tax exemption is also portable between spouses, meaning that a surviving spouse can elect to use any portion of the estate and gift tax exemption not used by the predeceasing spouse.

***Generation skipping transfer (GST) tax:*** This area of the law is quite complicated; however, charitable gifts may minimize the amount of transfer tax owed for some estates. It is one consideration to explore if the support of future generations is one of the person's goals and if the estate would otherwise be affected by the generation skipping transfer tax. Under terms of federal tax legislation in 2017, the amount exempt from the GST tax was also increased to \$11.58 million per individual for 2020.

For details on the GST tax, see Code sections 2601–2663 and the corresponding regulations, and check for the latest changes in the law governing this provision.

## Other opportunities

The will is the most commonly used method of making charitable gifts at death. Other opportunities exist, however, that may be used in combination with a will or as stand-alone vehicles.

For example, a charitable remainder unitrust or annuity trust allows a person to receive income each year for life while making a substantial charitable gift at death.

If desired, such a trust may be created in a will to go into effect at the person's death. The income in that case would be distributed to a survivor as specified in the trust agreement.

Charitable income or estate tax deductions (depending upon whether the trust is inter vivos or testamentary) are taken in the year the trust is established.

Other life income plans that feature fixed or variable income may also be available. In short, virtually any giving method that can be used during life may also be included in a will, adding to its attractiveness to donors.

*Recent developments:* The tax code changes frequently. Always check for recent developments before the completion of estate plans. The IRS publishes helpful tax planning information and updates at [www.irs.gov](http://www.irs.gov).

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