



**37 THINGS
PEOPLE
“KNOW”
ABOUT
WILLS THAT
AREN'T
REALLY SO**

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The importance of planning

Many spend a lifetime earning and saving for the future yet sometimes do not take even the simplest steps to determine how the assets they have worked for will eventually be managed and distributed to loved ones and others. Recent surveys indicate the majority of adults do not even make a will—the most basic of plans.

Although there are any number of reasons people fail to make adequate plans, the real problem could be they believe they know things about wills that are simply not true.

In this booklet we examine a number of supposed facts about wills and other estate plans that may not be the case. We trust you will find this information helpful as you plan for your future financial well-being and that of your loved ones.

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1. Only those with children and others who depend on them need wills.

Incorrect. Even people with no dependents need wills if they want to determine who eventually receives their property.

2. Only the wealthy need wills.

Incorrect. If you have any assets at all, you need a will, even if your estate is modest, your heirs few and your wishes simple.

3. Only people with troublesome relatives need wills.

Incorrect. In the absence of a will, even family members with the best intentions can be confused as to what your wishes may have been.

4. When someone passes away without a will, the law usually distributes their property in about the same way they would have.

Incorrect. State laws will distribute property according to strict rules. Spouses and children may receive equal amounts regardless of need, and no provision is made for distributions to friends or charitable interests.

5. Couples who own their property jointly don't need wills.

Incorrect. Joint ownership can be sensible and help reduce the expense and delay of probate, but both spouses will typically need wills to distribute other property that is not jointly owned.

6. Only the wealthy or those without close relatives make charitable gifts through their wills.

Incorrect. More and more people with modest estates and loved ones they wish to provide for also decide to make meaningful charitable gifts through their estate plans. This is especially true as recent changes in tax laws have made estate taxes less of a consideration for many and have freed more assets to provide for others.

7. State laws about wills are the same throughout the United States.

Incorrect. Laws that govern estate settlement vary by state. That's why you should always carefully review your will with the help of an attorney in the state where you live.

8. A will is the only way to leave property to others.

Incorrect. There are a number of other ways to transfer property at the end of your lifetime. You might, for example, create a trust with instructions for distribution of your property. Another option is to own homes and certain other property jointly. Life insurance proceeds and retirement plan remainders are typically left through beneficiary designations. Even if these other ways are used, however, a will can still be an important part of a complete estate plan.

9. Real estate is treated the same as other property.

Incorrect. There can be differences in how the law treats different types of property. For example, a will that distributes real estate must normally be valid in the state where the property is located, regardless of the owner's state of residence.

10. A person must be of “sound mind and disposing memory” to make a valid will.

Incorrect. Courts will honor wills made by people with failing faculties so long as they understood what they were doing for whom at the time they made the will.

11. Anyone can make a valid will.

Incorrect. A will created by a person under legal age or who is incapable of making sound judgments due to mental illness will not be valid.

12. A will is always valid regardless of its content.

Incorrect. This is not the case if a person is defrauded or is subject to what the law refers to as undue influence by another.

13. You have to be at least 21 years old to make a valid will.

Incorrect. A person must be of legal age to make a will. Most states set 18 as the minimum age.

14. A person can completely disinherit a spouse.

Incorrect. Although a will may attempt this, the surviving spouse may file a claim for a “marital share,” a minimum amount guaranteed under the laws of most states.

15. One spouse always has the same rights to the other spouse’s estate.

Incorrect. In some states, rights will vary depending on a number of factors, including whether property was acquired before or after a marriage.

16. Once a will is made, nothing can change it except a completely new will.

Incorrect. A codicil (amendment) added to an existing will can alter its provisions. A will may also be changed in other ways. For example, a marriage, divorce or birth of a child after making a will may automatically give to or take away inheritance rights from a spouse or others. Changes in laws can also alter the way in which a will is interpreted.

17. Children are excluded from an inheritance if they are not mentioned by name in the will.

Incorrect. In most states, a child born after the date of the will receives what he or she would have inherited under state law if there had been no will.

18. Witnesses must sign the will in the presence of the testator but not in the presence of each other.

Incorrect. In many states, witnesses must sign in the presence of each other, and they must be aware that they are witnessing a person's last will and testament.

19. Witnesses must be told the contents of the will.

Incorrect. This is not required. They need only know that they are witnessing a person's will.

20. Witnesses must be at least 21 years old.

Incorrect. Anyone can be a witness who is credible and competent, including children old enough to be aware of their role, although some states impose a minimum age.

21. It doesn't matter whether witnesses are also beneficiaries of the will.

Incorrect. A witness who is also named in a will may not be able to receive what is left them unless there are enough other witnesses to the will.

22. A handwritten will that is not witnessed cannot be valid.

Incorrect. In some states, such wills are valid when the testator's handwriting is known by friends and associates and can be identified by them.

23. Oral wills are never valid.

Incorrect. Such wills can sometimes be valid but only under certain conditions, for example, if a person is dying or is in the military on active duty during a war. State law may require that an oral will be made before three competent witnesses, one of whom puts it in writing soon after it is made.

24. An oral will can always revoke a written will.

Incorrect. In most states, an oral will cannot normally revoke a written one.

25. A will is the most effective way to leave life insurance proceeds and assets held in qualified retirement plans.

Incorrect. Usually the proceeds of a life insurance policy or the remainder of retirement plans are distributed according to the terms of a beneficiary designation form. If beneficiaries are not named or are no longer living or the estate of the owner is designated as beneficiary of the policy or plan, one's will may ultimately determine who receives the assets.

26. Because most people have estates smaller than amounts subject to state and federal taxes, it is a waste of time to consider planning to minimize these taxes.

Incorrect. It is true that under recent federal tax law changes larger amounts can be left to heirs free of gift and estate tax. Keep in mind, however, that

the total value of your home, savings and other assets may be greater in the future. Increases in investment values, insurance proceeds, retirement accounts and inheritances may also combine to cause your estate to be subject to estate taxes. In some cases, state inheritance or estate taxes apply at much lower levels than federal taxes. Check with your advisors for current amounts that are exempt from state and federal taxation.

27. A spouse always receives property free of estate tax.

Incorrect. Only property left directly to a spouse or for the benefit of a spouse in a properly drafted trust will qualify for a tax-free transfer.

28. Nonprofit organizations named as beneficiaries in wills need to be identified only by their popular, generally accepted names.

Incorrect. They should be identified by their proper legal name and address. The use of other names or addresses can lead to confusion and may not result in the intended charity receiving its legacy.

29. A personal representative need not be named for a small estate.

Incorrect. A personal representative should always be named. Necessary decisions are often best made by someone you know and trust rather than a court-appointed representative who may be unknown to you.

You may also wish to waive the expense of a bond, thus making more available for your heirs.

30. You should not name your husband or wife to administer your estate.

Incorrect. This can be practical when the spouse is healthy and willing to serve. Unfortunately, you have no way of knowing now if that will be the case. That is why it is a good idea to name another person or professional administrator to act if necessary.

31. When a will contains a trust, it is best to spell out the terms exactly and restrict trustees' powers.

Incorrect. It is usually best to provide for discretion in some matters. For example, you may wish to grant a trustee broad powers for investment of estate assets to allow flexibility to adapt to future changes in economic conditions.

32. A good will rarely needs revision.

Incorrect. Even the best wills may need to be revised if your current financial situation changes, as the needs of loved ones change or if personal representatives pass away or otherwise become unable to serve. Tax laws can also change over time, as can your charitable wishes.

33. When you want to care for your surviving spouse and also include charitable gifts, it is usually best to leave everything to your spouse, who can then leave any balance for charitable purposes.

Incorrect. It may be best for both spouses to provide for charitable gifts, as the interests of each spouse may differ and change over time.

34. The best and most preferred way to make charitable gifts is through your will.

Incorrect. The best way for you to give depends on many factors. Giving by will is convenient for many, but you may also wish to explore other methods that can help maximize tax and other financial benefits.

35. If you don't have a will, your estate is unplanned.

Incorrect. It is not necessarily the planning tools you choose, it's the care you take that can mean the difference between meeting a family's needs and leaving an estate in disarray. A will often serves as the basis of an effective estate plan, but it is possible to use other options, such as life insurance, retirement plans, joint ownership, living trusts and other methods, to distribute a portion of your assets.

36. Most of the important points about wills can be covered in a brief booklet such as this one.

Incorrect. The laws governing wills in just one state can fill several large volumes. That's why it's so important to consult an attorney as you consider your will and other estate plans.

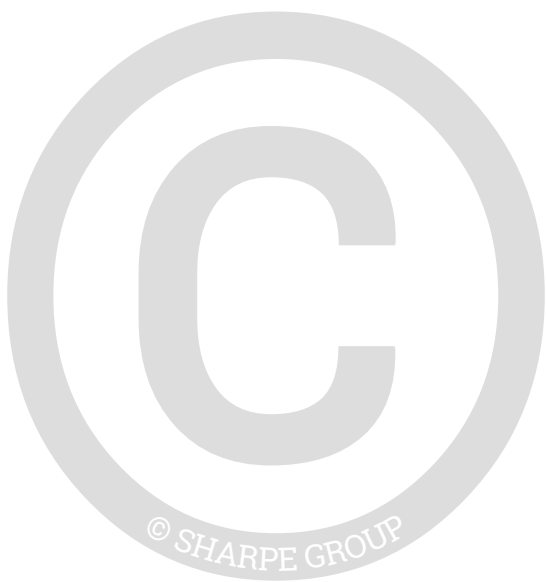
37. It is expensive to have an attorney draw up your will and often hard to find out just how much it will cost.

Incorrect. Attorneys expect to be asked and to quote fees in advance. The fee for their work and advice can be small when compared to the taxes and other expenses a well-drafted will and other plans can save your heirs.

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