

# Wills and Estate Planning 101\*

Alan K. Ormsby  
State Director, AARP Utah

## WILLS AND ESTATE PLANNING

Most people have property that they want to pass on to their family or others. The purpose of this guide is to help you understand how to pass your property in the manner you choose.

### Do I need a will?

#### **I. The “excuses”**

- “Everybody knows who’s supposed to get what.”
- “I wrote a list of my possessions and who gets them and put it in my dresser drawer.”
- “I don’t have much...the kids can just come in and take what they want.”
- “There are name tags on the bottom of all the knick-knacks and furniture.”
- “Last year, I put all of my money in a joint account with my oldest daughter. She knows she is supposed to split it with her brothers when I die.”

#### **II. You MIGHT NOT need a will if:**

- You own no property.
- You have no children, family or others that you would like to benefit.
- You don’t care how your property is distributed after your death.
- You want the state to divide up your property.

#### **III. You NEED a will if:**

- You have minor children or other dependants.

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- You care about how your property will be distributed after your death.
- You want someone other than a family member to get part of your estate.
- You don't want the state making arbitrary decisions about your estate.

### **What happens if I don't have a will?**

#### **I. Dying "intestate"**

- "Intestate" is just a fancy way of saying that you don't have a will.
- If you die without a will, the state will appoint someone to wrap up your affairs. This person is called an Administrator, and it may not be the person you would have chosen. Sadly, family bickering sometimes develops over this appointment.
- The state will determine where any children or dependants are placed.
- The state will apply a formula to decide who gets your property.
- If there is no family, your property "escheats" (goes to) the state.

### **How do I create a valid will?**

#### **I. Do it yourself**

- You must have legal capacity (called testamentary capacity). Basically, you must understand the nature of your property, the people to whom you are giving your property, and the consequences of your decision.
- There is nothing special about the form of the will. To qualify as a will, it must appear to the court, looking only at the document itself, that it is intended to be the final expression of the person's wishes as to the disposition of his or her property.
- So use the title "Will." Or the extra fancy "Last Will." Or the super extra fancy "Last Will and Testament."
- Put a date on the will.
- State that the will maker has testamentary capacity. Have two witnesses sign their names, stating that the will maker has testamentary capacity.

- If there were any former wills, state that all former wills are revoked. If possible, name the dates of former wills. EXAMPLE: "This will, dated March 20, 2021, is my last will, and the wills executed January 1, 2010 and July 4, 2000 are hereby revoked."
- Name an executor and at least one alternative.
- Name a guardian for any minor children or other dependants. Include at least one alternative.
- Distribute all tangible personal property (like cars, jewels, furs, collections, etc.) by name, adding "if owned by me at the time of my death." EXAMPLE: To Uncle Jim, I give my riding lawnmower, if owned by me at the time of my death."
- Distribute real property (real estate). Decide if you want to give shares of land or direct that the executor sell the property and distribute cash. Be sure this is clear.
- Have your two witnesses come into one room. Have them watch you sign, then have both of them immediately sign. Your two witnesses can be named beneficiaries of the will under Utah law.

## **II. Holographic wills**

- In Utah, a will is valid without witnesses if it purports to be a will, it is written in the will maker's handwriting, and the will maker signs it.
- Put a date on it, and revoke any former wills.

## **III. Go to an attorney**

- Expect to pay between \$350.00 for a very simple will and \$10,000 + for a large, very complicated estate plan.
- If there is any question as to capacity or "undue influence," go to an attorney.
- If you have a large or complicated estate, it makes sense to go to an attorney.
- If your estate is greater than \$12,060,000, congrats! You will need estate tax reduction strategies, and it makes sense to go to an attorney.

#### **IV. Revocation**

- Can I change or amend my will? Of course, but it must be done carefully and lawfully. You can't just scratch out certain portions, or write in new names.
- Often, it makes sense to just revoke the entire former will and do a new will.
- To revoke a will, either tear it up, burn it, or write REVOKED across the whole page of every page and add the date.

#### **What about probate?**

##### **I. The process**

- It is a court proceeding to settle the estate.
- Three steps: (1) Collection and inventory of all probate assets (all solely titled property); (2) Payment of estate taxes and creditors; (3) Formal transfer of the estate's property.
- Non-probate assets pass without probate. This includes most assets with a named beneficiary, like life insurance or an investment account. It also includes real property held in joint tenancy with right of survivorship.

##### **II. The costs**

- Attorneys who want to sell trusts have done a really good job of scaring people about the costs of probate.
- There are no probate costs for estates less than \$100,000. If your estate is less than this amount, simplified rules also apply.
- Probate costs are, for the average estate, about \$500 plus filing fees around \$350. If you have a larger estate or a lot of complicated investments, it could cost more. If anyone contests the probate, costs can increase.

## Other property transfer strategies

### **I. Gifts**

- Anyone can give up to \$16,000 per year to any person (or multiple persons) without incurring any gift or estate tax consequences. So a couple can give up to \$32,000 per person.
- If you want to give bigger gifts, see an attorney or a CPA to discuss the tax implications.

### **II. Deeds**

- A deed is used to transfer an interest in real estate to another person.
- Using a deed can have unpleasant consequences. If you deed away all of your interests in your property, you no longer have any rights.
- You definitely should use an attorney if you are deeding interest in a property.

### **III. Trusts**

- The most common question I get is, "Do you think I need a trust?"
- Most people DO NOT need trusts, but attorneys love them because they generate a nice fee.
- If you have a large estate and need a trust for tax planning, it MAY be a good idea. Only certain types of trusts have tax benefits.
- If you want to ensure that your children don't get their entire inheritance and blow it in Vegas, a trust is a good idea.
- If you have minor children or other dependants and you want to be sure they are taken care of, a pour-over trust (as part of a will) is a good idea.
- If you really cannot stand the idea of probate, a trust MAY help, but it does not guarantee probate avoidance.
- You give up a lot of control when you create a trust.