



What You Should Know About Wills

Ann thought back to the moment she learned of her 43-year-old husband's death. His heart attack and death were so sudden, so unexpected. Their ten years together had been a wonderful second marriage for both of them, in spite of George's disapproving parents. Now Ann is faced with the unpleasant discovery that under the law, George's parents stand to inherit one-half of all his assets, including the house in which Ann lives. George had not added Ann's name to the deeds of his property, or even written a will. He had thought a wife automatically inherited a husband's belongings.



A will is a written document in which you name the persons who are to receive your property upon your death. You must sign and acknowledge your will in the presence of witnesses. Under Kentucky law, two witnesses are required for wills, with the exception of *holographic wills*, for which no witnesses are required. A witness should not be a beneficiary, if possible, in order to protect that person's interest in the estate.

A *holographic will* is one that is entirely in the handwriting of the person making the will. It must be dated and signed at the end of the document by the person making it. If you use a purchased "will kit" to make your will, it may not qualify as a holographic will. In that event, it would still need to be witnessed by two people. If you are unsure whether your handwritten words are sufficient to satisfy the wills statute, check with an attorney.

Which state law is used to determine the validity of your will? The requirements of a valid

will vary from state to state. Holographic wills without witnesses are not valid in some states. Some states require the will to be signed in the presence of three witnesses. *The law of your domicile*—that state in which you make your permanent home—will determine the validity of your will for all property, except land you own in another state. To name a beneficiary for that land, you must follow the requirements of the state where the land is located.

What property will pass under your will?

Property of all types in your name alone will be distributed to the beneficiaries named in your will. For example, if your name alone is on a deed to real estate, then the real estate passes at your death to the person named to receive it in your will. Similarly, bank accounts, motor vehicles, stocks, bonds, and household items in your name alone pass to those beneficiaries designated in your will.

Joint tenancy property—that property which is in



your name *and* another person's name—passes under your will only if you and the other owner are tenants-in-common, a legal designation meaning that you each own a one-half, undivided interest in the property. Your interest is “undivided” because you own half the property as a whole. In other words, it is divided up only in a legal sense, not physically or geographically. If you wish, you may designate someone other than your tenant-in-common to receive your share of the property when you die.

However, if you and your brother own an apartment building as joint tenants *with rights of survivorship*, your interest in the building passes automatically to your brother when you die. You cannot name someone else to receive the property.

How do you determine whether property you own with another person is joint with rights of survivorship? The title to the property you own with another person determines whether the ownership is joint with survivorship rights. In general, “and/or” in the title to the property creates survivorship rights. The law on this question varies from state to state.

In Kentucky, even without “and/or” in the title, a joint bank account is presumed to be held with rights of survivorship. In other words, the balance in such an account is paid to the survivor at the death of one of the joint owners.

The rule for U.S. Savings Bonds is similar. If you and another person own a U.S. Savings Bond, the other person becomes the sole owner of the bond at your death.

The opposite rule applies for real estate in Kentucky. Your interest in jointly owned real estate passes under your will, and not to the joint owner, unless the deed to the property specifically provides for survivorship rights.

Are there any other assets which do not pass under your will? Yes. Your will does not control what happens to your life insurance, pension, retirement or employee benefits. You designate the person who is to receive the proceeds of your life insurance on a form provided by the insurance company. For pension, retirement or other employee benefits, the form to designate the

beneficiary can be obtained from your employer.

What provisions should be contained in my will? *A will should contain provisions to address the following matters:*

Debts: Are your debts to be paid from assets in your estate? The will can direct payment of some or all of your debts. Alternatively, the will can provide that the recipient of property is to pay any debt against the property. For example, if your residence is subject to a mortgage, you may require that the balance of the mortgage be paid by the person receiving the residence.

Taxes: If your will does not contain a tax clause, then any taxes due as a result of your death will be paid by the persons receiving property from your estate. Each recipient pays a share of the taxes based on the value of the property he or she receives. The will can direct payment from the estate out of cash or bank balances on hand.

Property: You need not list in your will every item of property you own. Usually, your assets are described in general terms, including everything you now own or may acquire after the will is signed.

Personal and Household Effects: There should be a specific clause in the will for your personal and household effects, such as furniture, clothing, books, jewelry and appliances. You can refer to a separate writing in which you list these items and the people who are to receive them. This separate writing is called a memorandum.

In Kentucky, the memorandum must exist on the date you sign the will. But the memorandum can be made or revised after you sign the will if it is entirely in your own handwriting, and if you sign and date the end of the document.

Cash Bequest: In your will, you may make a gift of cash to a person or charity. The bequest can be for a specific sum of money, or it can be limited to a percentage of your estate. For example: If you want to leave \$10,000 to your church and your total estate at the time you sign the will is \$100,000, then the bequest to the church is 10 percent of the total. If before you die your estate shrinks to \$50,000, the church's share of \$10,000 might be a greater percentage of your estate than you had intended.

Executor: The executor is the person you name in your will to manage your estate. You can name an individual or a financial institution (that is, a bank or trust company). If you name a woman, she is often referred to as an executrix.

Some states require your executor to be a resident of the state in which you lived. The Commonwealth of Kentucky allows non-residents who are related to you or your spouse to be appointed as your executor. However, Kentucky law does not permit a bank in another state to serve as the executor.

The executor's duties are to collect your assets and to arrange payment of your funeral expenses, debts and taxes. After paying all expenses, the executor transfers the balance of your property to the people named in your will.

The executor is entitled to receive a fee for managing your estate. In your will, you can specify how the fee is to be calculated. If you do not specify the fee, by Kentucky state law, the fee can be up to 5 percent of the value of your assets, excluding real estate. If the executor is a family member, he may elect to charge no fee or a reduced fee.

Kentucky requires the executor to sign a bond in an amount equal to the value of the assets in your estate. The bond is a contract requiring the executor to pay the bond amount from his own assets if he fails to carry out his duties in the management of your estate. The executor must provide a surety for the bond. An individual who owns land can be the surety on the executor's bond. An insurance company can serve as surety. Insurance companies charge an annual premium based on the bond amount. If you trust the executor you name to transfer your assets to your beneficiaries, you can add a provision to your will waiving the surety requirement.

Guardian: If you have young children, you should name a guardian to care for them in the event both you and your spouse die. The duty of the guardian is to provide day-to-day supervision for your children. The guardian is the person who will make decisions for your children on basic questions

of education, religion and health. You can name one or more people to perform these duties. A bond may be required for the guardian. In the will, you can waive any surety requirements on the bond.

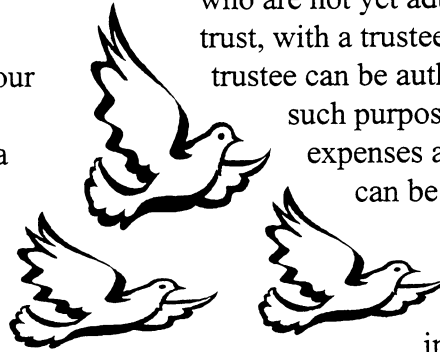
Trust for Children: You may wish to leave some of your property to children or grandchildren who are not yet adults. Your will can establish a trust, with a trustee to manage the property. The trustee can be authorized to spend trust funds for such purposes as the child's medical expenses and college tuition. The trustee can be an individual or a bank. The bank and the child's guardian can serve as co-trustees, with the bank handling the investments and the guardian directing expenditures from the trust for the child's needs.

If you die without a will, any property you leave to a minor will be managed by a guardian appointed by the court. In Kentucky, the guardianship ends when the child turns 18. In some states the guardianship continues until the child turns 21. When the guardianship ends, the property is turned over to the child. By contrast, a trust in a will can be established to run for as long as you think the child or grandchild will need assistance. You select the age or the time at which the trust is to terminate.

Who takes your property if you die without a will? In a will, you name those who are to receive your property when you die. If you die *intestate* (without a will), the law of the state where you live determines who takes your property.

If you die intestate in Kentucky, and you are married, your spouse receives half your property. The other half is distributed to your children. If a child has died before you, that child's offspring would receive the designated share. If you have no children or other blood descendants to take the half, it goes to your parents. Brothers and sisters (or nieces and nephews) are next in line if you have no blood descendants and your parents are not living.

Your spouse receives your property if you die without relatives in any of these categories. If you are single and die intestate in Kentucky, relatives in the order named above receive all your property.



In a will, can you disinherit your spouse and children? In Kentucky, you can disinherit your children, but you cannot disinherit your spouse. Your will cannot be set aside simply because you leave nothing to your children or because you leave them unequal shares. However, if you make no provisions or limited provisions for your spouse, he or she can elect against the will, taking a so-called dower share in your property. A dower share is equal to one-third of your real estate and half of all your other property.

Can you minimize the taxes payable at your death with a will? Through planning, you may be able to reduce the death taxes payable by your estate. A will may be one of the tools used in the planning process.

The impact of taxes will depend upon the size of your estate. Transfers of more than \$600,000 cumulatively during life or at death are subject to federal gift and estate tax at the rate of 37 percent or more. Kentucky's inheritance tax is being phased out for transfers to close relatives. After June 30, 1998, there will be no Kentucky inheritance tax on transfers to parents, children, grandchildren or brothers and sisters. Amounts received by other relatives will continue to be subject to the inheritance tax at rates ranging from 4 to 16 percent.

Where should you keep your will? Your will should be kept in a safe, secure place. Your executor should know where it is. You also may give its location to other trusted relatives. If your will is destroyed, even accidentally, the inference will be that you destroyed it intentionally, unless your executor can prove otherwise by clear and convincing evidence. Accordingly, your property will be distributed as if you had died without a will.

Talk with your attorney about the best place to keep your will. Your bank safety deposit box may not be the best place to keep the original copy of your will or your letter of last instructions. In most states, the box will be frozen at your death. The safety-deposit box only can be opened by the Property Valuation Administrator or someone else who has been designated by the PVA. The PVA makes a list of the contents of the box for the

Revenue Cabinet. The contents then are released by the PVA to a family member or to the district court for probate. In some areas, such as smaller towns, this process may be rather quick. In larger towns, however, the PVA may take some time before they get to your box. If your will is locked up, it will prevent your survivors from settling your estate. Usually, you should leave the original with the executor of your will. Another alternative is to leave it with your attorney and to notify your executor of its location.

How and when should I change my will? From time to time you may wish to make changes in your will. Do not write on the will. The changes can best be made in a codicil or in a new will. A codicil is a separate document in which you state the changes you wish to make to the original will. The provisions in the original will continue to be valid, except as amended by the codicil. The requirements for the execution of a codicil are the same as the requirements for a will.

You should review your will every few years. Revisions may be required because of changes in your finances or your family situation. The will should be rewritten if you marry or divorce, or if children are born or are no longer minors. Changes may be needed if a beneficiary dies or a child or grandchild is adopted. Review your will if you inherit substantial assets. In addition, if federal and state tax laws change, your will may need to be rewritten.

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