

# Last Will & Testament

## Frequently Asked Questions



Rebecca E. P. Wade  
rwade@meyercafel.com

**MEYER CAPEL**  
A Professional Corporation  
306 West Church Street  
Champaign, IL 61820  
Phone: 217-352-1800  
Facsimile: 217-352-1083

### What Is A Will?

A Will is a legal document that allows you to set forth the manner in which your property will be distributed at your death.

### May I Prepare My Own Will?

Legally, yes. However, a Will must be prepared and witnessed in strict accordance with state law. The complex legal requirements and potential tax implications of a Will make an attorney's advice essential. Only an experienced estate planning attorney can ensure that all applicable legal requirements are met and advise you as to the best estate planning options for you and your family.

### May I Change My Will?

Yes. So long as you are mentally competent and physically capable, you may change your Will by executing a new Will (which revokes and replaces your prior Will) or by amending your existing Will (by means of a Codicil), which must be prepared and witnessed in strict accordance with state law.

### If I Have A Will Does That Mean I Will Avoid The Cost of Probate?

No, but the cost of probate may be greatly diminished with a Will. By law, a surety bond must be obtained at the expense of your estate but you may waive this requirement by the terms of your Will. A properly drafted Will can also authorize your Executor to act with a minimum of court intervention, eliminating unnecessary delays and allowing your Executor to act more efficiently and cost effectively.

### Can a Will Eliminate or Reduce Estate Taxes?

Yes. Under certain circumstances, a skillfully drafted Will can provide for your surviving spouse (by trust or otherwise) in a fashion that eliminates or reduces estate taxes payable on the death of your surviving spouse, taxes which would otherwise be due in absence of a skillfully drafted Will.

### Is a Will Expensive?

Attorneys charge for the time they spend preparing a Will and generally spend a few hours preparing a Will. However, a properly drafted Will may reduce both estate taxes and probate expenses, as well as provide for various administrative efficiencies which can yield substantial cost savings. In many cases, the cost of the surety bond alone will exceed the cost of the preparation of your Will.

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### **May I Dispose of My Property Under My Will In Any Way That I Want?**

Generally yes, but with a few exceptions. For example, a surviving spouse has the right to elect to receive a fixed share of a deceased spouse's probate estate, and under certain circumstances, surviving minor children are entitled to a share of a deceased parent's probate estate even when a Will makes no provision for a spouse or minor children.

### **Besides Disposing of Property, What Else Can Be Done By A Will?**

By the terms of your Will, you may establish a trust or trusts not only to manage and hold assets for the benefit of your loved ones but also to realize estate tax savings. You may also use your Will to nominate a guardian to care for your minor children. You may also name a guardian to manage any assets passing directly to your minor children.

### **What Happens If I Die Without A Will?**

If you die without a Will (or die "intestate"), state law dictates who is entitled to manage your estate, and the court selects a guardian for your minor children. Your property will be distributed in accordance with the state laws of intestacy, which set forth rigid inflexible formulas for the distribution of your property. Even if you intend to leave your property to the same persons who would receive your property under the laws of intestacy, a skillfully drafted Will can yield substantial cost savings in the probate of your estate.

### **Who Will Administer My Will and Manage My Estate?**

You may designate an "Executor" to administer your Will and manage your estate. Your Executor collects your assets, pays your debts and expenses and any applicable taxes, and then distributes your remaining assets, if any, in accordance with your Will. If you die without a Will, the court will appoint someone, known as an "Administrator", to manage your estate and distribute your property in accordance with the laws of intestacy.

### **What Is The Effect of A Will On Life Insurance Proceeds?**

If life insurance proceeds are payable to the insured's "estate", rather than a named beneficiary, those proceeds will be distributed by the terms of the insured's Will or by the laws of intestacy if the insured does not have a Will. If life insurance proceeds are payable to any person, institution or entity other than the insured's "estate", the insured's Will has no effect on the proceeds.

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### If I Own All of My Assets Jointly With My Spouse, Do I Still Need A Will?

Property owned jointly by spouses does not automatically pass to the surviving spouse. If property is owned in joint ownership with rights of “survivorship” (such as joint tenancy or tenancy by the entirety), ownership automatically passes to the surviving owner. The deceased’s Will, if any, does not affect the disposition of this kind of property. This form of ownership can however produce negative, unintended tax consequences. If property is owned in joint ownership but does not include survivorship rights (such as tenants in common ownership), the deceased owner’s share of the property is distributed in accordance with his or her Will, or by the laws of intestacy, if the deceased dies without a Will.

### How Can An Attorney Help You?

An attorney experienced in estate planning can assist you in ensuring that you have a valid Will which is prepared and executed in accordance with state law. An attorney skilled in estate planning can also assist you in choosing the right guardian to care for your minor children and to manage any assets owned by your minor children, as well as assist you in selecting an appropriate Executor to administer your Will and manage your assets following your death. An attorney concentrating in estate planning can also assist you in creating a trust or trusts to hold assets for the benefit of your minor children and help you in selecting a trustee to ensure that those assets will be utilized prudently on behalf of your children.

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