



Do I Need a Will?



Many people shudder at the thought of making a Will. Probably because it brings to mind the painful thought of our own mortality. Unfortunately, this unwillingness to think about death leads many people to only consider creating a Will (or doing any estate planning for that matter) when they're well into their golden years.

Ideally, an estate plan will instruct our loved ones, help them manage our affairs after death, and potentially reduce tax burdens that can accompany our assets.



Who should have a Will?

If there is anything you gain from this white paper, hopefully it will be the realization that estate planning and Wills are not just for the elderly or people who fear their death is imminent.

You'll notice that the primary reasons for having a Will do not have anything to do with your age. In fact, your decision to create a Will depends mostly on whether you have children, are married, and if you have assets.



You should have a Will if you have children

If you have children, you have responsibilities, regardless of how old your children may be. If your children are still minors, it's important to use a Will to designate potential guardians whom you would trust to care for your children if the worst happened and both you and your spouse passed away. A Will also enables you to clearly identify which assets, if any, should be left to each child. This is especially true in blended families, because the traditional method of leaving all assets to a surviving spouse could lead to an inadvertent disinheritance of your child(ren) from a previous marriage.

If your children are adults, on the other hand, you may want to include them in your Will as your Executor. Your Executor (or executors) are legally responsible for fulfilling your wishes in your Will and wrapping up your affairs in accordance with state law. Many people initially appoint their spouse as Executor, and this can have negative repercussions. In many cases, when one spouse passes the surviving spouse is advanced in age and may have health problems which make it difficult for them to manage an estate in addition to grieving.





You should have a Will if you are married

Strategies that focused on credit shelter trusts for married couples were part of many estate plans before 2018. These were often structured so that specific assets -- typically a dollar amount up to the allowable federal estate tax exclusion -- passed to the credit shelter trust which the surviving spouse could then access. Because the trust didn't allow that spouse to actually control or even own the assets, these funds weren't included in their taxable estate.

Due to the amount of the new federal estate tax exclusion, any estates under \$11.4 million would potentially have the entire amount transferred to the credit shelter trust. This might not just limit the surviving spouse's ability to access the funds, but it could also limit the financial flexibility they need. Additionally, state estate taxes could kick in if the trust's language fails to place particular limitations on it.





You should have a Will if you are a homeowner or have a positive net worth

Regardless of your age, marital, or family status, you probably need a Will if you have any valuable assets. Most people think of themselves as wealthy or poor based solely on their monthly income or what they see in their bank account. However, your assets are much more than what you have in the bank. For most Americans, their home is their single largest asset. And the median home value in the United States is currently \$217,600 according to the U.S. Census Bureau (Source: CNBC). Life insurance, retirement accounts, personal property, vehicles, and everything else you have acquired over the course of your life often add up to estate values in the hundreds of thousands of dollars (even for older Americans living on fixed incomes). When you pass without a Will, all of your assets will be distributed according to state law (or a Judge's orders) and your loved ones will be obligated to pay a percentage of the value of your estate to your State. If there are not adequate liquid assets (like money in the bank) to pay those fees, your family may end up having to sell some of your assets in order to pay probate debts. While a Will does not fully bypass all fees and expenses of settling an estate, it can be designed strategically to minimize the amount your loved ones will have to pay.

Likewise, most debts do not automatically disappear upon a person's passing. Your loved ones will be responsible for paying your final debts (including the cost of a funeral and burial), so it is helpful to think about how you would like your debts handled long before death or incapacity. For instance, you may wish to obtain a life insurance policy to help cover debts after your passing or want your loved ones to sell off a specific asset in order to pay expenses (while preserving other assets like your family home). These are all instructions which can, and should be, included in your Will or estate plan. If you want your loved ones to keep your home in the family but sell off vehicles and personal property in order to pay debts, you can specify this in your Will.





What does a Will do and what are the risks of not having one?

A Will is a legal document that instructs your loved ones of your assets and debts, where your assets are located, how your assets should be distributed and debts paid off, and whom is charged with the task of executing your Will.

A Will can also outline how a business will continue without you, if any assets should be donated to charity, and how you wish to be memorialized after death. You can also include a “back-up” plan, for how you want your affairs to be handled if any of your loved ones pre-decease you (because life does not always go according to plan).

What a Will doesn’t do is instruct your loved ones how to handle your incapacity or disability before death (this is called a Living Will, Advance Directive, or Medical Directive). Also, a Will does not bypass Probate, like a Trust. Probate is the state-prescribed legal procedure for settling your estate. With a Will, your family will still have to open an estate with your local Probate Office (usually a Register of Wills), declare all of your assets and debts, pay fees based on a percentage of your total assets, and follow local rules governing estates. Often, this process requires the assistance of professionals like attorneys, accountants, and appraisers to ensure compliance with all regulations. In most states, the probate process takes a minimum of nine months after a person’s passing before assets can be distributed and an estate is considered “closed.”

#1 - A Will makes it easier for your loved ones.

There are many reasons for making a Will, but the #1 reason most people make a Will is to make things easier for their loved ones.

When a loved one passes, we all feel grief. You may think of your loved ones as smart, capable, and rational on a normal day, but we all operate differently after the death of a loved one. We don’t necessarily think the same way or even behave the same way we normally do.

While death is a fact of life, it is exceptionally hard to process for those left behind. Emotions run hot and our thinking is compromised. Some people don’t want to talk about money or even think about the legal procedures involved in wrapping up an estate. In fact, most people don’t think, “oh boy, what are my legal obligations now?” as soon as someone they love dies.



Your Will serves as a caring instruction manual for your loved ones when they would rather not think about finances or how to pick up the pieces after your passing. It tells them what your wishes are, in your own words, so they do not have to guess, taking much of the burden off their shoulders. Even if you have personally told them about your burial wishes or assume they know, your Will serves as a much-needed reminder to help them handle what needs to be done.

#2 - A Will ensures your assets are managed and transferred according to your wishes.

When a person passes away without a Will, the government steps in and determines what should be done. The government determines who gets your assets, who pays your debts, and how much the government gets paid in the form of fees and taxes. The government also determines who can manage your estate as an "Executor."

In some cases, you may want the same things as your state & local government, but not always. The only way to know, for sure, that your end-of-life affairs (from your medical wishes to how your debts are paid to the distribution of your assets) are handled the way you want is to make a Will.

#3 - A Will can prevent contested estates and disputes after your death.

When your wishes are made clear and there's no room left for guessing, there is much less of a risk for legal disputes over the handling of your estate. If you leave a surviving spouse with a clear Will, you reduce the risk that your spouse may have to sell your family home. When you specify that your child from your first marriage is to receive 25% of your estate, you ensure they won't be left out if you pass before your second spouse. If you have debts that need to be paid, you can specify that life insurance payouts are to pay your debts, not any other assets. If you're single with assets, you can ensure your siblings are in charge of (and/or entitled to) your estate instead of your local government officials.



Final Thoughts

Your Will communicates your final wishes; reducing the burden on your loved ones, minimizing the role of the government in your final affairs, and protecting your hard-earned assets.

Wills are important, at any age, and the good news is you do not have to incur huge debts to handle your affairs responsibly and leave a legacy of love and caring. Estate planning professionals come in all shapes and sizes and your estate plan can (and should) be as unique as you are.



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