## WHEN SHOULD A WILL BE CHANGED?

Ordinarily under Illinois law:

- a child born or adopted after the will has been made (unless provided for in the will) is entitled to the same share the child would get if there were no will.
- divorce or dissolution of marriage revokes a will as to all provisions for the spouse but other provisions remain.
- marriage does not revoke a will but it represents such an important change of status that it is advisable to review your will.

A will should be reviewed from time to time, especially after the death of a family member, a change of residence, the acquisition or disposal of property or a business, when the executor dies or leaves the state or when the witnesses are no longer available. Federal and Illinois death tax laws change from time to time, so you should have your will reviewed by an attorney periodically to figure out if your will should be updated.

## PLANNING YOUR WILL

Nobody likes to think about their own death and many people avoid writing a will because they do not want to be reminded that they will die. But in order to make sure that your children will be taken care of and that your money and other property will be given to the people you want to give it to after you die, you must have a will.

An estate lawyer can assist you in coming up with a plan and then preparing all of the documents needed to carry out your plan and make sure that your will meets all of the legal requirements. It is dangerous to use a pre-printed form of a will or a trust instead of a properly written document that applies to your particular situation.

Here is a check list of some of the things you should discuss with your lawyer, if applicable, when you plan your will:

- personal effects
- taxes
- special bequests
- real estate
- investments
- life insurance
- executor
- minors and guardians for minors
- trusts and custodianships
- joint tenancies
- IRA's, pensions and employee benefits

## CAN A WILL DIRECT MY DOCTOR TO "PULL THE PLUG"?

Illinois law allows you to sign a document called the Illinois Statutory Short Form Power of Attorney for Health Care ("Health Care POA"). This document, which is completely separate from a will, provides you with the opportunity, while competent, to name a family member, friend or other person (called an "agent") to make medical decisions for you if you are unable to make and communicate decisions for yourself at a later date. Those decisions may include withholding or withdrawal of life sustaining procedures. The Health Care POA also allows the agent to choose whether to donate your organs and make burial arrangements.

If you do not have a Health Care POA, Illinois law also allows you to have a "Living Will," which is limited in scope and tells your doctor your desires as to life sustaining procedures should you have an incurable and irreversible injury where death is imminent without death delaying procedures.

Where there is no Health Care POA or Living Will, the Health Care Surrogate Act allows your guardian, certain family members or close friends (if there are no family members) to make medical treatment decisions where you are unable to make decisions for yourself.

You should talk with a lawyer to make sure you understand your options regarding health care decisions and end-of-life alternatives.

*This pamphlet, based on Illinois law, was issued to give you some general advice about the law. It is not intended as legal advice about any particular problem. If you have a question about the law, you should consult a lawyer. If you do not know a lawyer, call the Lawyer Referral Service of The Chicago Bar Association at 312-554-2001.*

THE CHICAGO BAR FOUNDATION

THE COMMUNITY'S FOUNDATION FOR ACCESS TO JUSTICE

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# Wills:

## Basic information on how a will works, how an estate is settled, when a will should be updated, and planning

# What About Your Will?

A public service pamphlet by the Young Lawyers Section of The Chicago Bar Association

## WHAT IS A WILL?

A will is a written document in which you direct what will happen to property you alone own after your death (called your estate). It names the persons whom you wish to benefit or protect (called beneficiaries), and designates someone (called an executor) to carry out your directions as to the distribution of your property. To make a valid will, Illinois law requires that:

- you must be at least 18 years old
- you must be of sound mind and memory
- the will must be in writing
- the will must be signed by you and witnessed by two or more people who sign as required by law

If you do not meet these requirements, your will not be valid and the result will be the same as if you had no will.

The executor does not have to be an Illinois resident, but it will be easier if the executor is an Illinois resident. The witnesses should not be related to you and should not be beneficiaries or a spouse of a beneficiary. If your will disposes of real estate in another state, there will be requirements of that state that must also be met.

It is not safe to use a form or copy of someone else's will. It is very unlikely that your circumstances and relationships will be the same as those of your neighbor.

## WHAT HAPPENS WHEN THERE IS NO WILL?

If you do not have a will, the law requires that any property you own alone is distributed according to very strict rules that may be different from what you want to happen with your property after you die.

For example, if you die without a will, your spouse is still alive, and you have no children, then your spouse will get your entire estate. If your spouse is alive and you have one child or other descendent (such as a grandchild or great-grandchild), then your spouse will get ½ of your estate and your child or other descendent will get ½ of your estate. If you leave a spouse and more than one child or other descendent, then your spouse will get ½ of your estate and your child or other descendents will get equal portions of the rest of your estate. If you leave no spouse, then your estate will go to your children or descendents in equal portions. If you leave no spouse and no children or other descendants, your estate will be divided among your parents and brothers and sisters and, if a brother or sister is dead, to his or her children or other descendents.

There is a special need for a will if you have children under the age of 18. A guardian should be named who will take care of them after you are dead and make sure that any property they inherit is protected until they reach 18.

***EXAMPLE:*** Charles and Ruth had an only child (age 5) named Jane. Charles died without a will. Both Ruth and Jane survived Charles. Ruth received ½ of his estate and Jane received ½. Until Ruth went to court to have herself named as Jane's guardian, she could not use Jane's share for the child's support or education. Even then, she was strictly limited by the law in what she could do with Jane's inheritance.

Failure to make a will can often mean hardship and added expense for your immediate family, and benefit some relative you may not even know.

The law leaves you free (unless you have contracted otherwise) to give away your property by will in whatever way you wish, except that your spouse can renounce your will and receive ½ of your estate if you leave no descendant and 1/3 if you leave one or more descendants.

## DOES IT COST MORE TO HAVE A WILL?

No. When there is no will, an administrator named by the court (rather than an executor chosen by you) carries out distribution of your estate according to the law. The administrator has limited powers and may need to get permission from the court before he or she can do certain things, like selling your house or other property. The administrator must also pay for certain expenses with any money or property in your estate.

The cost of writing a will is usually much cheaper than the expenses the administrator has to pay if you do not have a will. A carefully drawn will can also often reduce taxes and other expenses.

If you make a will and name as executor an individual whom you trust and have confidence in, or a bank or trust company, you may, if you wish, give your executor broad powers to handle your estate without getting court permission for each specific action. All this will save money.

## WHAT IS INVOLVED IN SETTLING AN ESTATE?

Why must your estate go through court? To give your creditors (people you owe money or property to) and persons who believe that they are entitled to share in your estate a limited time in which to file their claims against your probate estate. Unknown creditors generally have a six month time period to file a claim against your estate, beginning on the date that your executor publishes notice to the unknown creditors that your probate estate has been opened. These legal requirements protect your beneficiaries.

In most cases, estates worth over $100,000 go through probate whether or not there is a will.

## IS THERE A SUBSTITUTE FOR A WILL?

No. No other form of property ownership or contract right is an adequate substitute for a will.

If two or more persons own property together in joint tenancy and one person dies, the property will pass automatically to the survivor(s) independently of the provisions of any will and without court administration. However, even if virtually all of your property is in joint tenancy, only a will can assure that other property owned by you in your name alone will pass to those you intend to benefit. If joint tenancy property becomes your property alone because the other joint tenant dies before you, the amount of property subject to disposition by your will could be substantial. There also are tax hazards to joint tenancy that most people do not know about.

A trust agreement can provide for the distribution of trust property on your death independently of a will and without probate. However, even if most of your property is in trust, you should have a will to dispose of any other property owned alone by you at death that has not been transferred to your trust.

Life insurance, Individual Retirement Accounts (IRA's), pensions and employee benefits will pass to the beneficiary named by you regardless of the existence of a will without the necessity of going through the court. However, if all the beneficiaries of your insurance policy, pension plan or employee benefits should die before you do, a will normally determines who will receive the amounts to be paid out by these policies or plans.

## CAN A WILL BE CHANGED?

At any time you wish, unless you have made a contract otherwise, you may revoke or destroy your will and make a new one, or you may change the provisions of your will with an amendment called a "codicil." A codicil must be executed in the same manner as a will.