

you should consult a lawyer. Your lawyer can advise you whether it is to your advantage to own the property with or without survivorship. Also, when you are having your will prepared, your lawyer should be informed of the specific facts regarding any property you own with any other person. Thus, the lawyer can draft it in such a manner as to comply with your desires upon your death.

Is a Life Insurance Policy a Substitute for a Will?

No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to a named individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the disposition of the proceeds may be directed by a will. The careful person will have a lawyer and life insurance counselor work together on a life insurance program.

May a Person Dispose of Property In Any Way Desired by Making a Will?

Almost, but not quite. For example, a married person cannot completely exclude the spouse. There are other restrictions which a lawyer can explain.

Does a Will Increase Probate Expenses?

No. If there is property to be administered or taxes to be paid or both, the existence of a will does not increase probate expenses. In fact, often it will cost much less to administer an estate when the decedent leaves a will. A will may reduce expenses of administration in many ways. For example, the will can relieve the executor of the obligation of making a bond, filing an inventory and having an appraisal made of all the property.

Where there is a will, the probate court passes upon it and distributes the estate to the parties named in it. Where there is no will, the probate court must determine who the legal heirs are

and then distribute the estate to them.

How Large an Estate Is Necessary to Justify a Will?

Any amount of property constitutes an estate. If you own a home or are buying one, you have an estate. Personal and family circumstances are important factors in determining whether your estate warrants the making of a will.

Who Should Draft a Will?

The drafting of a will is a delicate operation. It requires professional knowledge which can only be developed through years of training and study. Only the practicing lawyer can help you avoid the numerous pitfalls and advise the course best suited for your individual situation.

Is a Will Expensive?

A lawyer charges according to the time spent preparing a will. A few hours of an attorney's time may mean great savings in taxes and probate expenses. Usually, the cost of the surety bond, which may be waived by a will, exceeds the lawyer's charge for preparing the will. Most lawyers will discuss their fees in advance, and you should always ask about fees.

NOTE: This brochure, based upon Alabama law, is issued to inform, not to advise. It is not intended to apply to any specific problem or situation.

Published by:
415 Dexter Avenue



Montgomery, AL 36104
(334) 269-1515

October 2017

Last Will & Testament



Published by



What Is a Will?

A will is a document which provides how a person's property will be distributed after death. It must meet certain formal requirements as provided by the laws of each state.

Who May Make a Will?

In Alabama, the maker of a will must be 18 years of age or older. The maker of the will must also be of sound mind and free from improper influences.

How Is a Will Made?

1. The will must not be verbal, but written.
2. The will must be signed.
3. The will must be witnessed in a special manner provided by law.

When Should You Make a Will?

A will should be made while the maker is in good health, free from emotional stress. A prudent person does not wait for catastrophe or other compelling reasons before making a will. If you have children and you and your spouse die, do you want to name the guardian of your children, or do you want the court to appoint one? If you do not have a will, the court, by law, will appoint the guardian.

May a Will Be Changed?

A person may change a will as often as he or she desires. Changes are made by either executing a new will, which revokes or replaces a prior will, or by executing a legal addition or amendment called a "codicil." When a codicil to a will is made, just as when the original will was created, certain legal and statutory requirements must be met for the document to be effective. If you desire to change your will, always consult a lawyer in advance.

How Long Is a Will Good?

A properly drawn and executed will is "good" until it is changed or revoked. Changes in circumstances after a will has been made, such as tax laws, marriage, birth of children or even a

substantial change in the nature or amount of a person's estate, may raise questions as to the adequacy of that will. All changes in circumstances require a careful analysis and reconsideration of all the provisions of a will and may make it advisable to change the will to conform to the new situation.

What Happens When You Don't Make A Will?

When a person dies without a will, or dies "intestate," as the law calls it, the property of the deceased is distributed according to a formula fixed by law. In other words, if you do not make a will, you do not have any say as to how your property will be distributed. In Alabama, for example, if a person dies without a will, leaving a spouse and two children by that spouse, the spouse will receive the first \$50,000 in property value, plus one-half of the balance of the estate with each of the children receiving one-fourth of the balance of the estate. If a person dies intestate, his or her administrator cannot carry on the business of the decedent without express approval from the court. The authority of the probate court to approve the operation of a business is extremely limited. In most instances the business must be sold. If the children are under age 19, the surviving spouse would have to be appointed guardian of the children by the court and provide a bond. This guardianship would remain in effect during the minority of the children. Such proceedings could entail considerable expense and would create legal problems that could have been avoided had the deceased spouse made a will.

Who Will Manage Your Estate?

If you make a will, you may name the person you want to manage your estate during the period of administration. This person is called the executor. If you do not make a will, the probate court will appoint someone, whom you may or may not know, to handle the affairs of your estate.

Does a Will Avoid Inheritance Taxes And Other Death Taxes?

A properly drafted will may reduce or eliminate the amount of taxes that have to be paid. However, it is necessary that everyone be tax conscious. Many wills written without consideration of recent federal tax laws should be re-examined for tax problems. A lawyer thoroughly skilled in these matters can give you good advice, for the lawyer must not only know the law of wills and property, but also be familiar with both state and federal inheritance and estate tax problems.

What Happens to Property Held In The Names of Both Husband and Wife?

With a few exceptions, property held in the names of both husband and wife does not automatically pass to the survivor upon the death of one of them. To determine the ownership of property held in the names of two or more people, when one of them dies, you must first look at the documents under which the interest was held to see if they mention "survivorship." If there is survivorship at the death of one of the owners, the surviving owner(s) will acquire the deceased owner's share. It will pass outside of the deceased owner's probate estate and not be subject to any directions made in the deceased owner's will. If two or more people own property without survivorship and one of them dies, then the ownership interest of the deceased person becomes the property of his or her estate and is distributed according to his or her will, or by state law if the person dies without a will.

It is often difficult and legally complicated to determine whether an item of property, either real or personal, is owned with or without survivorship. Whenever you are about to obtain property of any kind, including real estate, bank accounts, titles to automobiles or securities of any kind, that you will own with any other person or even just have their names on,