

# Understanding Wills

## What is a Will?

Your loved one, throughout a lifetime, has likely accumulated assets such as property, investments, and savings. These and other assets, known as your loved one's estate, comprise the net worth. A will is a legal document that allows your loved one to specify who will receive certain portions of the estate after death.

## Benefits of your Loved One Having a Will

To many, estate planning, such as the drafting of a will, seems like a task reserved for high-income earners. To the contrary, every adult, including your loved one, can greatly benefit from having a legal will established prior to their death.

- **A will ensures your loved one's estate is distributed and managed according to his/her wishes.** Without an established will in place prior to their death, your loved one's assets may be distributed by a probate court. The court may rule to distribute portions of your loved one's estate in a manner that is in conflict with his/her wishes.
- **Wills reduce stress among surviving family members and friends** by clearly stating who is receiving what portion of the estate. Without a will, family members and friends may clash, potentially ending up in court, fighting over who is the rightful recipient of your loved one's assets.
- **Wills can eliminate unnecessary financial and legal hardship for friends and family.** Though your loved one's friends and family may not argue concerning your loved one's estate, they may need to seek legal counsel to decide who should receive what upon your loved one's passing. Your loved one's clearly-defined instructions concerning the estate can save a great deal of time and money.

## Requirements for Creating a Will

If your terminally ill loved one has not yet established estate plans, it may not be too late to take action. **Wills require that your loved one be of sound will and mind when creating the document.** Being of sound will and mind means that your loved one fully understands and appreciates the legal importance and impact of their will.

If your loved one suffers from Alzheimer's or other dementia-related illness, they may still be able to complete a legal will. If periods of lucidity can be confirmed in the presence of qualified medical professionals, your loved one may be able to meet the requirement for being of sound will and mind. Laws concerning wills and dementia-related illnesses vary from state to state. It is strongly recommended that you contact professional legal counsel in these cases.

## Helping your Loved One Create a Will

The creation of a will can be a simple or very involved process depending upon the size of your loved one's estate. In helping your loved one create a will, your assistance can give them a greater level of understanding and clarity when gathering information, selecting beneficiaries, and legalizing the documentation.

### Discuss and Gather Asset Information

Discuss with your loved one the assets and investments that they may own. In assisting your loved one with the gathering of this information, you may need to locate documents proving your loved one's ownership of certain assets. Your loved one's assets may include:

- Shares of stock
- Bonds
- Municipal holdings
- Foreign assets
- Properties

Though this process can be time-consuming and difficult, understanding the entirety of your loved one's estate can greatly simplify the distribution of assets. This knowledge also helps reduce the risk of disagreements and potential litigation among your loved one's family and friends.

# Select the beneficiaries

In the creation of the will, your loved one can specify the beneficiaries of their will.

**Beneficiaries are those who will receive something from your loved one's estate after your loved one's death.** There are three types of beneficiaries:

- **Primary beneficiaries** are the direct recipients of assets from your loved one's estate.
- **Secondary beneficiaries** are the next eligible party to receive assets from your loved one's estate if the primary beneficiaries are unable to do so or if the primary beneficiaries die.
- **Final beneficiaries** are those who will receive assets if both the primary and secondary beneficiaries die or are unable to claim the assets.

When helping your loved one select the beneficiaries of the estate, bear in mind who and what can qualify as a primary, secondary, or final beneficiary:

- **Any person or group of people** can be a beneficiary and receive a portion of your loved one's estate.
- **A charitable organization** can be selected as a beneficiary and receive assets from your loved one upon death.
- **A trust fund, and the beneficiaries of that fund**, can be the recipient of assets and be specified in your loved one's will.

# Select an Executor

**An executor is the person in charge of carrying out the terms of your loved one's will after death.** If you are your loved one's primary caregiver or closest relative, you may be their first choice for the role of executor. An executor's duties commonly involve:

- **Paying debts and taxes** on behalf of the deceased.
- **Managing inventory and financial** holdings of the estate.
- **Distributing assets to the beneficiaries** established in the will.

If your loved one requires your assistance in selecting an executor, keep in mind the importance of the executor's role and the tasks to be handled when considering potential candidates.

- **Would the potential executor act in your loved one's best interests?** Any potential executor must be fully committed to carrying out your loved one's wishes after their death.
- **Is this person 18 years old or older?** In the United States, executors of a will must be of legal adult age.
- **Can this person be trusted to perform under stress?** While wills can provide very specific instructions concerning beneficiaries, assets, and other facets of estate management, the executor is still ultimately responsible for completing those tasks. Managing the affairs of an estate can be a stressful and demanding task. When selecting potential candidates, consider the ability to perform when under stress.

## Making the Will a Legal Document

While your state's laws may vary concerning a will's legal validity, wills can fulfill legal requirements in most states without the assistance of a lawyer or presence of a notary.

- **Your loved one must sign and date the will** to ensure clarity and legal validity of the document.
- **Your loved one must have two witnesses watch them sign the will;** however, they do not need to be aware of the contents of the will. Most states require that the witnesses not be beneficiaries of the will.

If you have questions or concerns about the validity of your loved one's will, contacting a lawyer is strongly recommended. Lawyers in your state are aware of your state's specific guidelines and legal statutes concerning the crafting and legal validity of wills.

A will is an important piece of documentation for your loved one to have prior to their death. The investment of time and energy into creating a will is well worth the clarity that it provides. By assisting your loved one in the creation of a will, wishes are clearly expressed for the estate after death, help the surviving family and friends avoid undue hardship and arguments, and provide your loved one with peace of mind in knowing that their estate is managed with the utmost care.

## References

1. "Wills and Estates|Public Education." Wills and Estates. American Bar Association. Web. 3 June 2015.  
<http://www.americanbar.org/>
2. "Estate Planning with Foreign Property." Estate Planning with Foreign Property. American Bar Association, 1 May 2011.  
Web. 29 Apr. 2015.  
<[http://www.americanbar.org/publications/gp\\_solo/2011/april\\_may/estate\\_planning\\_withforeignproperty.html](http://www.americanbar.org/publications/gp_solo/2011/april_may/estate_planning_withforeignproperty.html)>.
3. Dukeminier, Jesse, and Robert H. Sitkoff. Wills, Trusts, and Estates. 8th ed. Austin: Wolters Kluwer Law & Business ;, 2009. Print.