

SWEET & MAIER, S.C.
SOME BASIC FACTS ABOUT WILLS

What Property Will Pass Under Your Will?

All property which is in your name alone will be disposed of by your Will, which would include, for example, a bank account, stock, real estate, your automobile, your television, household items and similar items held in your name alone. If you own an undivided interest in property with another, your undivided interest will pass under your Will, but not if the property which you own with another is joint with right of survivorship, or is owned by you and your spouse as marital property, with right of survivorship.

Assets Which Do Not Pass Under Your Will:

Property held in joint names with rights of survivorship will pass to the survivor (i.e. if the title to your house is held by you and your spouse as survivorship marital property).

Life insurance payable to named beneficiaries will pass to the beneficiaries.

Pension, retirement or other employee benefits payable to named beneficiaries will pass to the named beneficiaries.

U.S. Savings Bonds which are in joint names will pass to the survivor. Those payable on death to a named beneficiary will pass to the named beneficiaries.

If the named beneficiary in any of the above examples is “your estate” of your “executors and administrators”, then this property will pass under your Will.

GENERAL DISPOSITION PLANS

With property which will pass under your Will, it is not necessary that you name or describe each item. Your assets can be described by groups, categories or in any other way which adequately delineates your property. It is also possible to leave all of your property or certain categories of it to more than one beneficiary by providing that each beneficiary is to receive a fraction or percentage of all or any category of property.

If you would like for a particular beneficiary to receive a specific item of property or a specific amount of money, such a provision should be clearly expressed in your Will. If you wish to leave a specific sum of money to a beneficiary, because of the fact that your estate may increase or decrease in size between the time that you execute your Will and the time of your death, you may wish to consider whether or not the amount of money should be limited by a percentage of your estate. For example, assume your estate is

worth \$50,000.00 and you wish to leave a beneficiary \$500.00. Five Hundred Dollars is 1% of your estate. If your estate should shrink to \$25,000.00 by the time of your death, the bequest of money may be more than you would have intended under the circumstances. If, however, your bequest is made in terms of the lesser of \$500.00, or 1% of your estate, then the bequest would shrink proportionately with the total estate.

Personal And Household Effects:

In dealing with your personal effects and household goods (which includes furniture, appliances, silverware, china, wearing apparel, automobiles, etc.) we frequently recommend a provision which leaves all of such property to a surviving spouse and alternatively to children, grandchildren, etc. Under such a provision, if the property passes to children, or to some other group of beneficiaries as you desire, the clause provides that you may leave a memorandum which specifies who will receive the property within the group that you have named. Such a memorandum can be made and changed at any time without going through the intricacies of amending your Will.

Your Residence:

If you own a residence or other parcels of land subject to a mortgage, unless you provide otherwise in your Will, the person to whom you leave your residence or land may be entitled to require your executor to pay off the mortgage. If this is not what you desire, you may wish to provide that the residence or land is left to a beneficiary subject to the mortgage, and this will mean that the executor cannot be required to pay off the mortgage. Instead, it will become an obligation of the person receiving the property.

Your Executor/Personal Representative:

It will be necessary for you to name an executor for your Will. The function of an executor, or personal representative, in summary, is to collect your assets, pay your debts and distribute the remainder of your property to the beneficiaries named in your Will. Many people name their surviving spouses and alternatively, adult children, as executors of their Wills. It is possible to name one executor and any number of alternate executors to serve in the event that the prior named executors fail to serve. For example, a surviving spouse can be named as primary executor, the oldest child as first alternate executor and the second oldest child as second alternate executor. An executor must be over the age 18 to serve; however, a minor child can be named executor in your Will if he (or she) is over 18 when your Will is probated.

It is also possible to name two or more persons to serve as co-executors and such co-executors will serve concurrently with each other. Alternate executors can be named for any co-executor who does not serve. It may be wise, although it is not necessary, to name a bank as the final alternate executor.

It is not necessary that your executor, if an individual, be a resident of the State of Wisconsin. However, Wisconsin law does not permit a bank licensed in another state to

114 N. Church Street, P.O. Box 318, Elkhorn, WI 53121

www.wisclaw.com

Telephone: (262) 723-5480 - Facsimile: (262) 723-2180

serve as executor of the Will of a Wisconsin resident. An executor is also sometimes referred to as a Personal Representative.

Testamentary Guardian:

It is also possible, under Wisconsin law, to appoint in your Will a guardian for your children who may be under the age of 18 and who have no surviving parent. We can discuss this very personal matter more fully at our conference.

Minor Children:

If you have minor children, you will want to consider incorporating into your will a contingent trust that would be established for you children in the event of the death of both you and your spouse. We can discuss this in more detail at our first conference.

COMMON PROBATE TERMS

Understanding some of the common probate terms will help you in developing and understanding your Will. Some of the commonly used terms in probate, Wills and trust documents are as follows:

Bequest, Bequeath:

A bequest is a gift by Will of money or personal property (excluding land). To bequeath means to make such a gift.

Codicil:

A codicil is an amendment to a Will which changes the Will in some manner. It is usually a separate document and must be executed with the same formalities as a Will.

Devise, Devisee:

A devise is a gift by Will of land. A devisee is the person to whom land is given by a Will.

“In Default Of Issue”:

As used in a Will, “in default of issue” means dying without leaving any living children, grandchildren, etc.

Issue:

Issue means lawful blood descendants, whether children, grandchildren, great grandchildren, etc., and as used in this Will, includes adopted children, grandchildren, etc.

Lapsed Legacy Or Devise:

When a beneficiary under a Will dies before the person making the Will, the gift, whether of land or personality, lapses, which means that it does not pass to the deceased person or his estate.

Per Stirpes:

This is a Latin term which when used in a Will means that if a beneficiary of a Will dies before the testator leaving surviving children, those children will take their deceased parents' bequest under a Will.

Residuary Estate:

The residuary estate is that portion of your total estate covered by a residuary clause in your Will. The residuary clause of your Will disposes of all of your property not disposed of earlier in your Will. In other words, after you have made specific gifts, a residuary clause normally provides that you leave "all the rest, residue and remainder" of your estate to one or more beneficiaries.

Testator/Testatrix:

The term for a male/female who is making a Will.

POST EXECUTION INFORMATION

Once a Will has been completed and signed, there are still several questions that we are commonly asked. Some of those questions are as follows:

Where Shall I keep My Will?

You should keep your Will in a safe, but accessible place. We normally recommend that you keep it in a safe deposit box in your bank. If your Will leaves property in a way significantly different from the way it would pass if you die with no Will, then a secure location is extremely important. If you name a bank as executor, you could let the bank keep the original Will in its Will vault. If you desire, we can keep the original of your Will in our firm vault at no charge to you.

We also suggest that you keep a photocopy of your Will at home for reference and annual review.

Whom Should I Tell Where My Original Will Is Located?

114 N. Church Street, P.O. Box 318, Elkhorn, WI 53121

www.wisclaw.com

Telephone: (262) 723-5480 - Facsimile: (262) 723-2180

You should tell your spouse and your Personal Representative (Executor) where your original Will is kept. You may want to tell some other trusted relatives as well.

What Do You Do With the Photo Copy of My Will?

We keep it in your confidential file. We will not make copies for anyone other than you or someone you authorize.

Who Should Get Copies of My Will?

It is not necessary for anyone other than you, the client, to have copies of your Will. If you wish, we will be glad to make copies for anyone you desire, but remember if you change your Will, the copies of the old Wills could be embarrassing to you.

When Should I Review My Will?

We suggest that you review your Will every time there is a significant change in your family or financial situation. As a minimum, you should review your Will once every three years.

What are Some Changes That Would Cause Me To Review My Will?

Death of a beneficiary

Marriage, divorce or remarriage

Birth or Adoption of a Child

Death or change of Personal Representative

Death or change of Children's Guardian

If you change your name, or anyone mentioned in the Will changes theirs.

If you change your mind about distribution.

If there is a significant change in your assets.

If you retire

If you buy, inherit, or receive assets as a gift.

Finally, any time you feel uneasy about your Will make changes so you do feel comfortable with it.

114 N. Church Street, P.O. Box 318, Elkhorn, WI 53121

www.wisclaw.com

Telephone: (262) 723-5480 - Facsimile: (262) 723-2180

How Do I Change My Will?

Do not write on the Will. Changing your Will is often done by a Codicil. However, if you are changing beneficiaries or changing the amounts being given to beneficiaries, it is a better practice to redo the Will. The fee for redoing your Will is usually the same as for adding a Codicil. We recommend that you contact us if you want to make any changes and to make certain all changes are legally made.

How Do I Revoke My Will?

The best way to revoke a Will is to tear up the original. Normally you should not revoke your Will unless you are having a new one prepared.

If you revoke your Will and die without one, your property will be distributed according to State Law, and that may not be the way you want.

Should I Tell My Personal Representative Who My Attorney Is?

Yes, in case you die, your Personal Representative should know where to locate your Will or a copy of it.

What If I Have Other Questions About My Will?

Feel free to call us. We are glad to answer your questions.

Attorney John L. Maier, Jr.
Sweet & Maier, S.C.
February, 2010