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## **YOUR WILL**

A Will (or Last Will and Testament), is one of the most important legal documents a person can have, and everyone should have one. Sometimes referred to as a deceased person's "final voice," a Will is a plan to direct the disposition of the fruits of a lifetime. Despite the importance of having a Will, about half of all Americans die without one. Here are a few questions and answers to help you learn more about Wills.

### **Exactly what is a Will?**

A Last Will and Testament is a document containing your instructions about how you want your assets (called your estate) distributed after you die. By leaving a Will, you exercise your right under the law to determine who receives what share of your assets. Moreover, a Will also allows you to name the person who will be in charge of administering your estate. In Michigan this person is called the Personal Representative and is considered a fiduciary, i.e. one who serves in a position of trust. Other names for a Personal Representative, used in the past or in other states include Executor or Executrix, and Administrator. The Personal Representative must act in the best interest of the estate and is subject to the control of the Judge of Probate. A Personal Representative has no power to act until the death of the person who made the Will.

### **Who needs a Will?**

Anyone aged 18 or over who owns assets, e.g. a car, cash in a checking or savings account, or an interest in a home, should have a Will. Real property is land and everything that is permanently attached to it; personal property is everything else. If you own both, or either, you should have a Will. You may not think your estate is that big, but whatever its size you want it to be used in the best way possible to take care of your family and the people you care most about. A Will is as important in a small estate as it is in a large one. It guarantees that your assets will be distributed exactly as you desire, instead of according to a legal formula, called the intestate (dying without a Will) law.

## **Won't joint ownership avoid the need for a Will?**

Joint ownership of property (called “joint tenancy”) is a form of ownership where two or more owners own an asset together and after one owner dies, the other owns it all. The transfer of property to the remaining owner or owners is said to occur automatically, “by operation of law” and there is no need for probate of the asset. This is referred to as “rights of survivorship” meaning the surviving owner becomes the full owner. Assets owned by a husband and wife are owned in a special form of joint tenancy called “tenancy by the entirety,” which operates the same as a joint tenancy. Husbands and wives almost always own their assets jointly, but many unmarried people think the best way to avoid probate is to create these joint tenancies with their children or other persons who they want to own the asset after their death. Seems simple, and it can be a useful tool. But it's not sensible for all situations, and it can create problems instead of solving them. It should be approached with extreme caution as there are significant disadvantages and plenty of risks if the joint owners are not married. Adding a name to anything you own results in loss of control over the asset, the possibility that a part of it can be reached by creditors of the joint owner, and the possibility the asset can be dragged into the divorce action of a joint owner. Even where joint tenancy is utilized, a joint owner should have a Will to dispose of the property when he or she becomes the sole owner, and to cover other assets not jointly owned.

Assets owned jointly with the person selected to be the Personal Representative are not part of the estate and will not be distributed by the directions of the Will—they will belong exclusively to the joint owner.

## **Can I change my Will?**

Yes. A Will is not effective until after death. A change or amendment to the Will is called a codicil and can be made at any time. In fact, you should consider a periodic “Final Check Up” of you Will and your property and make any adjustments necessary so your Will continues to cover your present assets as well as reflect your current desires as to their disposition. Changes to a Will should be made by an attorney. There are many cases in the law where a person tried to change a Will by crossing words and names out, or writing in new instructions, only to have the Will or portions of it later held invalid by the Probate Court. These kinds of modifications of a Will can create suspicions the Will was tampered with.

### **What happens to my assets when I die?**

The answer depends on how your assets are owned. If you own assets, either real estate or personal property, in your own name only, then those assets will need to be transferred to your beneficiaries through the Probate process. If you have a Will, the assets will be transferred according to the directions in your Will. If you do not have a Will, then they will be transferred according to the formula set out in the Michigan intestate law. If there is no Will, then your assets go to your heirs at law, your blood relatives, in a certain order, beginning with a surviving spouse. If you have no spouse, then your children, and if no children then your living parents, then brothers and sisters, etc. Thus, the probating of an estate is just an orderly process, with oversight by a Judge, which ensures that your property is properly transferred after you die and your legitimate last bills paid.

### **If I'm single and want to give my assets to my children, why do I need a Will if the intestacy law distributes my assets to my children anyway?**

The intestate law's formula is rigid; it cannot take account of special arrangements. Suppose, for instance, that your children are in different situations and one has greater need than others. The intestate law would give each the same share, though their needs are different. With a Will you can arrange to meet those differing needs.

### **Can I write my own Will?**

Yes, however, the best option for obtaining a Will is to have it drawn up by a lawyer. Michigan law allows you to prepare your own Will, and if it is all in your own handwriting it need not be witnessed—this is called a holographic Will. If the Will is typewritten, or word processed on a computer, it must be witnessed. The problem that most people encounter when writing up their own Will is they realize they don't have the knowledge, training and experience to be able to create a Will which they are confident about. If you make a Will, you want it to be valid and you want it to work. At the very least, if you are intent on writing your own Will, you should visit your local library to review some books or articles on the subject.

Under state law, Michigan also allows a person to use what is called a Statutory Will. This is a preprinted form, with blanks to fill in, but is mainly used in the "simple Will" situation, i.e. where you are giving all your assets to your spouse, or if the spouse is deceased, then to the children in equal shares. With such a Will you can also make two specific gifts. Statutory Wills are available for free from your State Representative or State Senator. Or, you can call the Legal Hotline for Michigan Seniors to make arrangements to have one sent to you. The Hotline can

also answer any questions you may have about preparing a Statutory Will. Having a Will prepared by an attorney is still the best option for most people for the reason that attorneys are familiar with all the requirements for a valid Will. Many factors influence how a Will should be drawn up, e.g. from the tax standpoint, in terms of savings to the estate and heirs, and the best way to have assets distributed.

### **How do I find an attorney?**

If you do not know an attorney, it makes sense to seek the recommendations of relatives or friends whose judgment you trust. This is often the best way to help you locate a competent lawyer. You may also contact the State Bar of Michigan Lawyer Referral Service by dialing 1-800-968-0738. Lawyers in your area are listed in the Yellow Pages of your telephone directory under "attorneys." In some cities you can find a low cost lawyer through the **AARP** Legal Services Network at 1-800-424-34 10. The Legal Hotline for Michigan Seniors has a Referral Attorney Panel and may be able to help you find a lawyer. Even if you rely on a referral service, remember to be a smart consumer.

### **What should I do with my Will after I sign it?**

A signed Will should be kept in a safe place. Optimally, you want your Will to survive you—to be available, even if something happens to you. A safe deposit box at a financial institution is a good place to keep your Will. All courthouses in Michigan have strong vaults and you can place your Will there for safekeeping for a \$25.00 fee. An advantage to this option is that the Will is easily available if Probate proceedings are required. For about the same amount of money you can buy a locking, fireproof box at most home supply stores; such a box can be used to store not only your Will, but other important documents, like deeds, birth records and insurance policies. You can also consider having your Personal Representative keep the Will for you. Poor places to keep your Will include a desk drawer, in a box in the closet, or under the mattress. The problem with such places is that your Will is at risk of being lost, or worse, destroyed in some calamity like a fire. It's probably most sensible to simply have one signed copy of your Will. Your lawyer will want to keep a photocopy and it's a good idea to have a copy yourself, to keep at hand in the event you want to review it to check something. By having only one signed "original" Will, if you want to make a new Will, you can revoke the one you have by destroying it and not have to worry about the presence of other signed copies.

### **I have a Will I made in another state—is it valid in Michigan?**

Michigan law provides that a Will made in another state, and valid according to the laws of that state, is automatically valid in Michigan. There can always be a question of validity. However, if the out of state Will was drawn by an attorney, there is a strong likelihood that it is a valid Will.

### **If I have a Will, will my estate still need to be probated?**

Quite a few people are confused about this. Probate will always be necessary if you die leaving assets, either real estate or personal property, in your own name. Thus, whether or not probate will be required is not dependent on if you have a will, but how you own your assets. The probate process under Michigan law has been simplified in the last decade and at present, individuals dying with assets worth less than one and a half million dollars will face neither state nor federal inheritance or estate taxes.

### **What are the reasons I should have a Will?**

There are a number of sound reasons why everyone should have a Will. As already mentioned, perhaps the most important reason is that you guarantee that your assets will be distributed exactly how you want them to be. Other important advantages to having a Will are:

- You are able to name the person to administer your estate, called your Personal Representative; if you die without a Will the Court will appoint Someone, not necessarily of your choosing;
- You are able to control the disorder that can occur during the awkward time after your death;
- You can leave assets to charitable organizations, unmarried partners and other special people who are not blood relatives;
- Even if you own all your assets jointly with another, the Will can cover assets in your own name you are not aware of, e.g. "forgotten" assets or proceeds of legal claims possibly arising from your death; and
- There is a soothing peace of mind to know your affairs are in order.

## Conclusion

It is a fact that about half of the people who die do not have a Will. This is lamentable when you consider that the cost of a Will is relatively inexpensive (about \$150-\$300), it is easily obtained, and there is great peace of mind to be derived from making one. Unfortunately, unfamiliarity with Wills and legal matters, and a tendency to procrastinate keeps many people from making a Will. Some people simply do not want to think about death. Sadly, not making a Will can result in drastic consequences for your family and loved ones. Many callers to the Legal Hotline report feeling more secure after having made a Will. If you don't have one, strongly consider taking the next step to complete this important document.

*This pamphlet gives general information about Wills based upon Michigan law. Laws regarding Wills vary from state to state. The information herein is not intended as a substitute for consulting with an attorney who would be able to discuss your situation in greater depth and answer specific questions. You can speak with a lawyer by calling the Legal Hotline for Michigan Seniors at 1-800-347-5297, weekdays 9-5. Additional resources are also available on our website at [www.legalhotlineonline.org](http://www.legalhotlineonline.org) under toolkits for advocates.*

*The Legal Hotline for Michigan Seniors has also prepared other pamphlets related to estate planning, including: What Happens if I don't Have a Will, Do You Really Want to Avoid Probate?, Living Trusts, and Durable Power of Attorney for Finances. You can obtain a copy of any of these pamphlets by calling the Hotline.*

*The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank You.*



## The Most Important Letter You May Ever Write

You may have already thought about a plan to leave your estate— your assets— to your relatives or beneficiaries, and put the plan into a legal document such as a will or a trust. If you haven't, there's no time like the present to do this!

Recent studies have shown that wills and trusts are sometimes contested because heirs and beneficiaries are dissatisfied with items of personal property they were given. There are ways to prevent this. Sometimes people decide to give certain items away, as they age, before their death. Michigan law allows a person making a will to attach to the will a list of personal property and who should receive it.

In addition to a will or trust, another document that you should consider drafting is commonly referred to as a Letter of Instruction. This is a less formal document than a will or a trust which you draft, which provides the Personal Representative and beneficiaries of your estate (named in your will) additional and more personal information regarding your estate. Following are some suggestions of items of information that would be helpful and appropriate to include in a letter of instruction:

- A statement as to the location of your will.
- Burial instructions such as name of cemetery and location of plot, and location of the plot deed. If you wish to be cremated, include instructions about the care or place of the ashes. Veterans wishing to take advantage of their opportunity to be buried in a national cemetery should note this.
- A list of names and addresses of all people who should be notified of your death and their family relationship; this will also be useful if probate of your will is necessary.

- The location of important legal documents, such as deeds, insurance policies, titles to vehicles, marriage/divorce papers, etc.
- Documents establishing your membership in any lodge or organization—there could be a death benefit or insurance coverage.
- The name of all financial institutions (and account numbers) where you have any type of account.
- A list of all US Savings Bonds and stocks and bonds and their location.
- A list of any pension, profit sharing or other retirement benefit plans in which you are a participant.
- The location of recent local, State and Federal tax returns.
- A statement setting out any gifts of personal property not mentioned in your will.
- A listing of any money you owe on loans and any funds due you from any source.
- Keep your Letter of Instruction with your Last Will and Testament, which might be in a safe deposit box, fireproof box or in any other place safe from peril.

The Legal Hotline can answer questions you may have about estate planning, wills, trusts and probate, as well as other legal topics. You can call weekdays 9-5 PM to set an appointment to have a lawyer call you back, oftentimes the same day. Call (800) 347-5297.