

## Wills

A will is the most basic part of a client's estate plan. An attorney starts with a will and then adds different estate planning documents as the client gets married, has children, and increases the value of his/her estate. There is nothing terribly exciting or unique we can tell you about a will; so we will not spend much time on it, but there are a few items you need to keep in mind.

If you do not have a will when you die, you will be seen as someone who died intestate. That simply means that the property in your estate will be divided up per your state's statute on intestacy. In every state, there is literally a list of who gets what and in what percentages when you die. If you have a spouse, some states pour the entire estate to the spouse; however, that is not always the case. We would suggest that you check your state statute if you do not have a will, but a better idea is to go out and get one.

### **Minor children**

The main reason you should have a will if you have minor children is to determine who will get custody of those children in the event you and your spouse if married die prior to the children reaching the age of 18.

If you are in a car crash where both you and your spouse are killed and DO NOT have a will, the courts will determine who get custody of your children. Many times both sides of a married couple's family will want custody and will litigate custody in the courts. This is expensive and NOT in the best interests of your children.

### **How much should a will cost?**

Not much. You should be able to get a will for you and your spouse for between \$150-\$250. Attorneys do not do much when creating a will; however, the professional liability with the document created lasts for the life of the client, thereby justifying the fee.

### **How often should you update a will?**

You should update your will any time you get married, have children, get divorced, increase the value of your estate, if a child happens to predecease you, or if the tax laws change. You should also update your will if you do not have A&B marital living trusts and want to change who gets what when you die.

## **Why don't I just handwrite a will instead of paying for one?**

A handwritten will is called a holographic will, and many states do not recognize holographic wills as a legal document. We do not have any problem not hiring an attorney to draft a will, but make sure your state allows for holographic wills and if you do one, make sure you follow the rules. We do not suggest a holographic will because we believe every estate plan should have A&B trusts, which must be drafted by an attorney.

## **Can I leave my spouse out of my will?**

Believe it or not, high income or net worth clients have a high divorce rate. Many times a second spouse is taken later on in life (the crude term is "traded up" when a man marries a much younger female, which we frown upon if for no other reason than it is just too darn expensive).

Most states do not allow you to cut your spouse (typically the second spouse) out of your will, and so just make sure you check your state laws before doing anything drastic with your will. Also, when you get divorced, you should immediately change your will so your ex-spouse does not have a claim to some of your estate.

In some cases, a divorce, which is high profile and has substantial asset or income issues, will continue for a year or more. In such cases, if you continue to have the old will in place and you happen to die, there is a strong argument to be made that, although you were estranged from your soon-to-be ex-spouse, he/she still gets to take from the will as if he/she were still married to you (which is true at your death since the divorce was not final). If that happens, the soon-to-be ex-spouse typically will receive the majority or all of your estate instead of the state mandated minimums for widows/widowers (widow's election).

If you want to turn over in your grave, die during a divorce and look down from above and watch as your soon-to-be ex-spouse spends all your money.

In some cases, those who have such complicated divorce cases should consider consulting with both their divorce attorneys and their estate planners to consider **changing the will during the divorce process** while the spouse is estranged. After the divorce is completed, another final will should be completed to deal with the post-divorce situation.

## **Conclusion**

Everyone should have a will if for no other reason than to prevent the state from dictating who gets your belongings when you die. Wills are inexpensive and not time consuming

to put in place, and so we do advocate that everyone obtain a will as soon as practical in life.

We advocate that you purchase a will at your earliest convenience.

To purchase a will by a pre-certified attorney, please contact us and we will help facilitate the process.

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