

Last Will & Testament

Ensuring Your Non-Trust Assets Are Properly Distributed

A last will and testament is a legal document that outlines an individual's final wishes regarding the disposition of any assets not provided for elsewhere as well as preferences for the care of minor dependents. It can be a stand-alone document or used together with a revocable or irrevocable trust. How it functions in an estate plan depends on whether the plan is entirely will-based (where the will covers the distribution of assets) or trust-based (when assets are held in a trust for later disposition). There are key differences in how assets are transferred via a will vs. a trust. While a trust is in effect and working during an individual's lifetime ("inter vivos"), a will only takes effect on the maker's death and is overseen by each state's probate court under the administration of an executor. The probate process is a public one and can be both lengthy and expensive, depending upon the circumstances.

Common Questions about the Last Will and Testament

If I have a trust, do I need a will? We recommend you have a will in place even if a trust is the primary method of transferring assets. For a trust to avoid the probate court process, assets must be retitled – or funded – into the trust. A will is necessary to handle any assets that were not funded into your trust (or which do not have a beneficiary designation). This type of will is commonly referred to as a "pour-over" will, because it states that any assets titled in your individual name at your death will flow (or "pour") into your trust at death. A pour-over will, therefore, serve as a safety net since it is not uncommon for an individual to forget to retitle one or more asset into their trust.

Can my successor trustee also act as executor of my will? The short answer is "yes," and this is often the case, but the answer really depends on what is best in your particular situation.

What if I don't have a will? If you do not have a will (called "intestacy") and have not provided for the transfer of your assets through another method, the laws of the state you live in at the time of death (in addition to any other state where you might own real estate), will determine who will inherit your estate. This could greatly delay the transfer of assets, limit what individuals could inherit depending on state law, and very well may differ from your actual wishes. Moreover, if you do have minor dependents, you would have no say in who takes care of them. That decision would fall to a probate court judge.

Is a will something I can create on my own? Technically, yes, but to be enforceable, a will must be valid. In other words, the will must comply with

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all applicable state laws and directives or the probate court will not honor it. Effectively, that is the same as not leaving a will at all. Many of the rules governing wills relate to specific details, such as the number of witnesses and how you sign. Also, it is highly recommended that a will be an integral part of an overall estate plan. An attorney experienced in estate and trust laws is your best guide to avoid any potential missteps.