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Could a Will Be Right For You?

The term last will dates back more than a millennium to English common law, in which a person expressed what they "willed" to have happen to their property. The use of what we now know as a will dates back even further, to ancient Romans, who, under the Code of Justinian, recognized documents that transferred possessions from deceased male citizens to their heirs.

While some of the specific uses and terminology related to wills have changed over the years, this estate planning tool retains its core purpose of transferring a person's assets (money and property) to others after their death. Wills have stood the test of time—and for good reason: they are fundamental to controlling your assets and legacy.

What a Will Does—and Does Not Do

The simplicity, flexibility, and clear instructions that a will provides for the disposition of assets explains why this tool is as relevant today as it was thousands of years ago.

If anything, as our lives and social networks have become more complex and the things we own have grown more numerous, the need to plan for death has been magnified. Throughout all the changes, however, the humble will has remained a cornerstone of estate planning.

Here is what a will allows you, as the creator of the will (or testator), to do:

- Name the individuals (or entities, like charities) you want to receive your assets upon your death
- Name an individual (the executor or personal representative) to be in charge of accounting for all your assets and liabilities and filing all necessary paperwork with the probate court
- Appoint a guardian to care for your minor children when you die, and name somebody to care for your pets after you pass.

Wills do have some limitations, so you should also understand what a will does not do in an estate plan:

- A will only governs assets held individually in your name without a beneficiary designation at the time of your passing.
- A will cannot dispose of the entire interest of assets that are owned jointly, especially those including rights of survivorship (i.e., with a spouse or child) or governed by beneficiary designations or other contracts. Named beneficiaries on life insurance and retirement plans, for example, take precedence over the terms of a will, as do payableon-death (POD) and transfer-on-death (TOD) designations on bank accounts.
- A will does not control who makes financial and medical decisions for you if you are alive but unable to make them yourself due to illness, injury, or age-related decline.

It is also important to note that wills only take effect at the time of your death. You cannot use them to transfer assets during your lifetime as you can with certain types of trusts. However, you can use will-based trusts, known as testamentary trusts, that the executor sets up according to the instructions in your will if you want your assets held for a beneficiary for a period of time or indefinitely.

Why a Will Might Be the Right Answer for You

If most of what you own will be distributed according to a beneficiary designation, POD or TOD designation, or by operation of law due to joint ownership, you may look at a will as a safety net in case some assets have to go through probate. If you have modest accounts or property, you may be okay with your loved one receiving their inheritance outright. You may think that putting too many restrictions will eat into the inheritance being left behind. It is important to remember that you are relying on the designations to distribute your assets, so the designations need to be up-to-date. Take caution when planning to transfer assets at death by beneficiary designation, however, when your intended beneficiaries are minor children, financially irresponsible adult beneficiaries, or beneficiaries with special needs.

You may also be interested in a will because they are easy to understand and quick to implement. A will is a set of instructions for what will happen at your death. Because you retain ownership of your assets even after the will is signed, there is no additional paperwork needed to implement your plan (with the possible exception of updating beneficiary designations if changes need to be made).

Lastly, depending on your goals and circumstances, probate may not be so bad. If you believe that there will be fighting among family members, going through probate allows a third party (the judge) to oversee the proceedings and make sure that everyone is on their best behavior. If you are worried that your family will be too lazy to manage things on their own, probate can provide the required structure, timelines, and oversight to ensure that all the required tasks are completed on time.

Express Your Will with Help from an Estate Planning Attorney

When you sit down to create a will, you are participating in a legal tradition that dates back millennia. Failure to express your will and final wishes in a legal document may leave your loved ones without the future you intended for them. To help create a plan that brings your legacy into greater focus, please reach out and schedule a meeting.