

## **Your Will**

The material presented is general legal information intended to alert you to possible legal problems and solutions.

### **What is a will?**

A will is a set of instructions that explains how you want your property distributed after your death. In Wisconsin, you must be at least 18 years old and of sound mind to make a will. Married people under 18 can make a will. Your will must be in writing and must be signed by you and at least two witnesses. The witnesses must also have seen each other witness your will. It is important to make sure these requirements are carefully observed.

### **What are the benefits of a will?**

A will allows you to decide how your estate will be distributed or managed after you die. It lets your wishes be heard regarding the care of minor children. It often prevents disputes among heirs and relatives. In a large estate, a will can also reduce the amount of taxes that may be due at your death.

### **Is a will expensive?**

**No. A simple will is not expensive. However, the cost of any will** depends on how much work your lawyer does for you. As wills become more complicated, the cost rises. Ask your lawyer for an estimate of the cost. In general, the trouble and expense of not having a will far outweigh the cost of the will.

### **Is a will from another state valid?**

Yes. Generally, if you made a will in another state according to the laws of that state, it is valid in Wisconsin also. This is also true if you created a trust in another state.

### **Who should draft a will?**

A will is an important legal document that can have a significant impact on your family. A lawyer can give you good advice on how the will should be prepared and executed. Having a lawyer draft your will may give you the assurance that your will accomplishes your goals for distributing your property.

### **Can a will be changed?**

You can change your will at any time as long as you are of sound mind. You may want to change your will for many reasons, such as marriage, divorce, birth of children, or an increase in your assets.

### **Does a will avoid probate?**

No. If you own property in your name alone, at your death probate is necessary to transfer that property to the person named in your will. If you don't have a will, the probate process transfers your property to the people entitled to receive it according to Wisconsin law.

### **How much property can I have before I need a will?**

The amount of property you own does not determine whether you need a will. Your personal and financial circumstances determine when and how a will should be drafted. For example, it is

important for new parents to have a will to provide for their children even if they own little personal or real property.

### **Can a will help avoid estate taxes?**

Yes. If your estate is taxable, meaning it is greater than \$850,000, a will may be part of an estate plan that reduces or eliminates estate taxes. The tax-exempt amount will increase to one million dollars by 2006.

### **Who will manage my estate?**

If your estate needs management, the court will appoint a personal representative (executor). You can decide in your will who that person will be. It can be someone familiar with your property and affairs, or a professional, such as a bank or trust company. Using a professional can sometimes prevent distrust among family members.

### **What happens if I do not have a will?**

If you do not have a will, and if you have property that must go through probate, your property will be distributed according to a formula in the law. For example, if you are married and don't have children, property that is in your name alone will go to your spouse. This is also true if you are married and have children from this marriage. If you are married and have children with a different person, half of your property will go your spouse. The other half will go to all of your children, regardless of who is their other parent. If you have a child under the age of 18, the court may choose someone to take care of the property for that child. If you do not have a will or any family that would be entitled to your property, your property (which is in your name only) may go to the State of Wisconsin. Your family (heirs) includes a large category of relatives: spouse, children, grandchildren, parents, siblings, grandparents, nieces, nephews and cousins.

### **What is a trust?**

A trust is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints a trustee to manage your property and gives detailed instructions on how the property will be managed and distributed. A trust is one way to take care of a minor child, an elderly person or someone who needs help handling money. A trust may be established during your lifetime, and you may act as your own trustee, or it may be established by your will after your death. Trusts are generally more complicated to create than a will, and you may want to consider having an estate planning lawyer assist you.

### **Can a living trust substitute for a will?**

A properly drafted living trust can work well as a substitute for a will and sometimes may reduce the costs of handling your estate. However, even if you have a trust, most advisors would recommend you also have a will to cover the possibility that some of your assets may not be covered by the trust at the time of your death. Whether a living trust is proper for your estate is a decision to be made after receiving competent legal advice.

### **Can joint accounts substitute for a will?**

Not really. These are usually considered in order to avoid probate. Many spouses own real estate, bank accounts, stocks and bonds and other types of property as husband and wife with the right of survivorship. This means that if you die leaving your spouse, your jointly owned property

passes automatically to your surviving spouse, regardless of what your will says. A life insurance policy determines who receives the benefits; not the will. Also, complications may result if you and your spouse rely on joint ownership and/or insurance instead of a will because they do not direct how your property will be distributed if you and your spouse die together in an accident. Therefore, joint ownership and life insurance can be part of a coordinated estate plan that also includes a will.

**Should I consider a medical advance directive?**

Yes. With a medical advance directive, you may address many of the medical decisions that are required if you become seriously ill. In addition, a medical advance directive allows you to choose a "health care representative" to make health care decisions on your behalf, if you become incapable of doing so.

**This information is not intended to be legal advice regarding your particular problem, and it is not intended to replace the work of an attorney.**