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Wills

A Will is a written document that gives instructions on how you want your property distributed when you die.

What happens if you die without a Will?

If you die without a Will, Virginia law divides your property as follows:

If you are married, your spouse gets all of your property, unless you have children with someone other than your spouse. If you have children with someone other than your surviving spouse, your surviving spouse gets one-third and all your children share the other two-thirds.

Example 1: John dies without a Will. His wife, Sue, and their two children, Steve and Jill, survive him. Sue inherits everything.

Example 2: Andy dies without a Will. Andy is survived by his second wife, Becky, Chris (Andy's and Becky's son), and Dana (Andy's daughter by his first wife). Becky inherits one-third of Andy's property and Chris and Dana each receive one-half of the remaining two-thirds.

If your spouse does not outlive you, all of your property will go to your children or their descendants (such as your grandchildren).

If you have no surviving spouse, children, or descendants of children, your Estate will go to your mother and/or father if they outlive you.

More distant relatives may receive your property if none of your immediate family survives you.

Remember that this law can be changed in the future.

Do you need a Will?

You need to have a Will to make sure your property will go to the people you want. Other reasons for having a Will:

- You may leave property to a friend or charity that would otherwise receive nothing under Virginia law (for instance, without a Will, a boyfriend or girlfriend will not receive any of your property).

- You may leave specific property to a certain person (my collection of baseball cards to Aunt Susie).

- To make sure your property will be divided quickly and easily. A Will could also prevent your family from fighting with each other over your property.

- If a child under 18-years old inherits property from someone who did not have a Will, a court will have to appoint a guardian to manage the property. This is an expensive and inconvenient process. A properly drafted Will avoids this.

- You can name the person you want to handle the distribution of your property (your Executor) in your Will; otherwise a court will determine who handles your Estate.

Do you need a lawyer to write your Will?

Yes. A lawyer would know how to write it so that it will be clear what you want done with your property.

Can you handwrite a Will?

Handwritten Wills are legal. It may not be a good idea though. There are several legal requirements that must be followed. The Will must be entirely in your handwriting, signed by you at the end, with nothing following your signature.

What should you do before meeting with a lawyer?

Decide who should receive your property at your death (your “beneficiaries”). Do you want to leave all your property to one person, or do you want it divided?

Do you want to leave certain items of property to specified people (my baseball cards to Aunt Susie)? If so, make a list.

It is a good idea to name an alternate beneficiary in case you outlive a beneficiary.

You should also decide who should be your Executor. The Executor’s duties will include collecting your property, paying any debts, and distributing your property according to your Will. The person you name should be someone you trust.

It also is a good idea to name an alternate Executor in case your Executor is unable to serve.

What if I leave my spouse and children out of my Will?

A surviving spouse has a right to claim at least one-third (if there are no surviving children) of your property. If the Will gives the surviving spouse less than one-third, the spouse will receive one-third anyway.

Property that is owned jointly with a spouse that has a “right of survivorship” is automatically owned by the surviving spouse, regardless of the Will. Typically, this includes joint bank accounts or a jointly owned home.

It is a good idea to at least mention all of your children in the Will, even if they inherit nothing. This lessens the chance that an omitted child will challenge the Will because he or she was “forgotten.”

Is your life insurance part of your Estate?

Proceeds from a life insurance policy will not be part of the Will or your Estate. The person who receives the proceeds of your policy will not be required to use the money to pay for funeral expenses unless your Estate is named as the beneficiary of the policy.

Can you change your mind or revoke your Will?

You can change or revoke your Will because it is not effective until your death. If you want to make changes to your Will, you should contact a lawyer.