

WILLS

THE FOLLOWING INFORMATION IS PROVIDED COURTESY OF THE MISSOURI BAR ASSOCIATION:

What These Words Mean

Estate – the property you own in your name alone at your death. It does not include joint property or property held in a trust.

Personal Representative – the person in charge of your estate. May be referred to as an Executor or Personal Representative.

What is a Will?

A legal paper that states who receives your property when you die. Each state has its own laws about wills.

A will does not avoid the necessity of probate; nor does it require probate.

Who Can Make a Will?

Any person who is at least 18 years old and of sound mind.

When is a Will Legal in Missouri?

When it is signed and the signature was witnessed by two people.

A will can be changed in special ways.

An earlier will may be canceled by properly executing a newer will.

You can cancel your own will by destroying the original and any copies you may have made.

What if You Die Without a Will?

Property that you owned alone goes to your close relatives and sometimes to more distant relatives. If no relatives are found, a highly unusual circumstance, your property goes to the state. Who receives your property is set by law, not by your choice.

To Whom Can You Give Your Property?

To any person or groups you choose, in any manner you choose.

Some laws limit what you can do.

Your spouse can choose a certain amount from your estate if he or she does not like your will.

Why is it Better to Have A Will?

You can save some costs by “waiving bond.”

Only you can decide who receives your property.

You can name a guardian/conservator for your minor children.

You will know that you have planned for your family.

How Long is a Will Legal?

Until changed or canceled by you.

A will benefitting a spouse will not be enforceable if you get a divorce.

When Should You Think About Changing Your Will?

Your family changes through marriage, divorce or death of a member of your immediate family.

Your family, property, money or other assets change in value or nature.

You move to another state.

What Can Take the Place of a Will?

Property or bank accounts titled jointly with others.

Life insurance is a way to own property and provide for its transfer upon your death, but it is not a will.

A living trust, which allows one to designate an individual or an entity (such as a bank) to manage property within the trust.

Non-probate transfers such as beneficiary deeds, pay-on-death provisions on bank accounts and certain other assets, and transfer-on death provisions on motor vehicle titles.

These should be used in place of a will only after you have talked to a lawyer.

You should always have a will in addition to these other techniques as a safety net to cover those items that are not “titled” assets.

These techniques, if used correctly and under the right circumstances, may enable you to totally avoid probate.

Who Can Write a Will?

Anyone can by law, but there are many pitfalls and, if proper technical language is not used, certain bequests or the entire will may become unenforceable.

Only a lawyer can write a will that you can be sure will be valid and enforceable.

Lawyer's Fees

Ask the lawyer how much the fee will be.

The Minimum lawyer's fee to handle an estate in court will be set by law and the court.

Frequently in smaller estates, the statutory minimum will not be enough to compensate the lawyer for the work. The lawyer will suggest an alternative, such as payment for work done at an hourly rate or perhaps a flat fee or higher percentage than that provided by statute.