

Making a Will

We have friends all over North America and in overseas nations. From time to time, I am asked how to make a will. Since I am not an attorney, I cannot tell you how you should do it. But I can tell you how I would do it, as well as provide some general information on the subject.

First, I could go to an attorney and have him draw up the will. Or I could write it myself. Certain items need to be included; but, of these, the most important would be my signature, the date, and the signatures of witnesses. Notarization with witnesses is extremely helpful if I prepare my will unaided by a lawyer. It is best that the witnesses should not include relatives or anyone to which you wish to leave anything.

A will is actually one of the most important documents a person ever signs. It enables a person to distribute his property after his death. It tells his family and friends whom he wants to administer his property and other assets, to whom he wants to leave them and the conditions under which the people he names are to receive them. It also concerns vital family matters, as who will be the guardian of his minor children.

If a person dies without a will, his family may be saddled with needless work and trouble, heavy administrative expenses that a will may prevent, and (very likely) estate tax liabilities that may eat up much of the money that would otherwise be available for his family's support.

You are said to die *testate*, if you have left a valid will, and *intestate* if you have not. A *testator* is a man who leaves a will; a *testatrix* is a woman who leaves a will. All your assets, including money owed you at your death—less your debts and expenses—constitute your *estate*. If you die intestate, your assets must be distributed according to the intestate distribution laws of the state where you live; and these laws may in no way conform to your wishes. For example, under the laws of one state your wife would get only one third of your assets and your infant child two thirds. Another state's laws would divide your property equally between your wife (who might have nothing to live on) and your parents (who might have ample means). The solution is to make a will. To be absolutely certain that it is made cor-

rectly, if your estate has special situations involved, see your attorney. As a rule, if you do not make a will, most of your estate will generally go to your children. Keep in mind that you can also change your will or write a new one. The latest date obsoletes the earlier ones.

LAST WILL AND TESTAMENT

(Name of Testator)

KNOW ALL MEN BY THESE PRESENTS that I, _____, of _____, being of sound and disposing mind and memory, do hereby revoke any and all former Wills and Codicils to Wills made by me, and not acting under duress or undue influence of any person whomsoever, do make, publish, and declare this to be my Last Will and Testament, as follows, to wit:

Bequests or legacies are specific items given to someone in your will. A *specific legacy* would be a tape recorder. A *general legacy* would be \$1,000. Your *residual estate* is what is left over after the legacies are listed. This *residue* is divided among your relatives and/or other individuals you name. If a named beneficiary dies before you do, the legacy to them has *lapsed*.

Then there are *eleemosynary, or charitable, bequests*. These are legacies left to charitable, educational, or religious organizations. It is best to consult an attorney if you wish to leave part of your estate to a church, charity, or college.

The *presumption of survivorship* clause, noted elsewhere in this report, protects you in case both you and your spouse die at the same time. Otherwise the court may treat the matter as intestacy.

You can also leave your estate in *trust*. There are several types. Those set up in a will are *testamentary trusts*. But, while you are still alive, a *living trust (inter vivos trust)* can be set up. There are also *life insurance trusts, accumulation trusts, and charitable trusts*. You would need an attorney to set up a trust.

—vj

FIRST: I direct the prompt payment of my just debts, if any, and my funeral and testamentary expenses.

I would next need to jot down what I owned that was of any value, and who I wanted the various items to go to after my demise. For example, if I wanted it all to go to just one individual, I would next write this:

SECOND: I give, devise, and bequeath all of my estate—real, personal or mixed, of whatsoever kind and nature and wheresoever the same may be situated—to my beloved _____,

THIRD: In the event that my beloved _____, _____ does not survive me for a period of thirty (30) days after my death, then I declare the said Article Second to be null and void and I give, devise, and bequeath my said estate to be distributed as follows:

Perhaps, in addition to the above, I might want all my household furnishings to be distributed among my children. Then I would add this:

A. All of my household furnishings and personal effects shall be distributed by and between my surviving children or their guardians, if any be minors, as they shall select. Any items not so selected, I direct my Executor, hereinafter, to sell and reduce to cash within forty-five days after my death. The proceeds are to be added to the residue of my estate.

But, perhaps I would also like to have portions of it distributed to others, not of my immediate family. Then something like this might be written:

FOURTH: All of the rest, residue and remainder of my estate, I direct my Executor to liquidate and reduce to cash and to distribute in equal shares by and between those of my children who survive my death, and:

- _____, located at _____

In the event I leave no surviving children, I direct the remainder of my estate be distributed as

follows:

- (i) ___% to _____, located at _____
- (ii) ___% to _____, located at _____
- (iii) ___% to _____, located at _____
- (iv) ___% to _____, located at _____
- (v) ___% to _____, located at _____
- (vi) ___% to _____, located at _____
- (vii) ___% to _____, located at _____

But I may prefer to distribute my property and furnishings, item by item. In that case, instead of the above, I might write something like this:

- I give my _____ to _____, [address].
- I give my _____ to _____, [address].
- I give my _____ to _____, [address].

It is important that, in your will, you mention everyone who is a close relative. If you do not mention them, they can later charge, in court, that you forgot them at the time you made your will.

In addition, I give \$10 each, to each of the following:

- _____.
- _____.
- _____.

The above provides a number of variant ways I can prepare my will, regarding who I want to will different things to. Keep in mind that “*real estate*” includes land and buildings; “*personal property*” does not include land and buildings. “*Household furnishings*,” of course, includes items in the house.

If I have minor children, it is important that I make a will, so they will be properly cared for. If anything were to happen to me before all of them were grown, who would be responsible for them? (When Peter Marshall died, his wife Kathryn discovered he had made no will—so his children belonged to the District of Columbia, where they lived! Because he left no will, she had ongoing court activity, at considerable expense, until the last child was grown. So make a will!)

With all this in mind, if I have minor children, I will want to add the next paragraphs to my will:

FIFTH: In the event any of my surviving children are minors at the time of my death, then I nominate and appoint _____, of _____, _____, as Guardian of the person and property of such minor child or children.

In the event _____ is unable or unwilling to act as Guardian, then I nominate and appoint _____, of _____, _____, as Successor Guardian of the person and property of such minor child or children.

In the event _____ is unable or unwilling to act as Successor Guardian, then I nominate and appoint _____ of _____, _____, as Successor Guardian of the person and property of such minor child or children.

In the event that _____ is unable or unwilling to serve as Successor Guardian, then I direct the pastor of the _____ Church, in _____ or his successor in office, to nominate and appoint a suitable Seventh-day Adventist couple who are faithful to, and are guided by, the historic beliefs and standards of Seventh-day Adventism, who understand the importance of Christian education to act as Successor Guardians of the persons and property of such minor child or children.

Before the will is complete, there still remains the matter of appointing an executor, a friend or relative who will take charge of making sure the will is carried out. Notice that it is necessary that I make provision for my legal debts to be paid out of my estate.

SIXTH: In the event of a common disaster, causing the death of both myself and my _____, and under such circumstances as to make the order of death doubtful, it shall be conclusively presumed that I survived my _____ death.

SEVENTH: I nominate and appoint my _____, _____, as Executor of this my Last Will and Testament, and direct that he / she not be required to furnish bond or security.

In the event that my _____ is unable or unwilling to serve as my Executor, I nominate and appoint _____, _____, as Executor of this my Last Will and Testament, and direct that he / she not be required to furnish bond or security.

EIGHTH: I authorize and empower my said Executor to sell and dispose of all or any part of my estate—real, personal or mixed—of which I shall die seized or possessed, to which I am entitled at the time of my death, with or without order of the Court, at public or private sale, for such prices, at such times and on such terms and conditions as he / she shall deem meet and/or proper, and to make, execute, acknowledge, and deliver all proper writings,

deeds of conveyance and transfer; therefore, to settle and compound any and all claims, either in favor of or against my estate, upon such terms and conditions as my Executor may see fit; to give full receipts and discharges in the premises. I further authorize and empower my Executor to mortgage or lease any property which may constitute a part of my estate, without notice and with or without order of Court, at such times and upon such terms and conditions as said Executor, in his discretion, may deem desirable, and to give, execute, acknowledge, and deliver all proper writings, notes, mortgages, leases, assignments, or other documents necessary to such mortgages or leasing.

At this point, the will may be complete. If so, I need only add the signatures and dates. This is important; for it makes the will valid. At the time I sign the will, it is vital that I do it in the presence of two witnesses. This attests to the fact that it is really my will. I signed it knowingly, and was in my right mind when I did it, and not under duress. Notarization at the time is *very helpful*, but not crucial. At the same time it is well that, sideways, I sign and date each page of the will as well. (I should also make sure that each page is numbered at the top: "Page 1 of 4," etc.) If it is to be notarized, be sure and leave enough room for the notary's seal and written notations.

I, the undersigned testator, being of sound mind and after thoughtful deliberation, free from coercion, and in the presence of these witnesses, do hereby sign this, my last will and testament.

Name _____
Residing at _____
Date _____

WE, the undersigned attesting witnesses, hereby certify that the foregoing instrument was on the day of the date thereof signed, sealed, published, and declared by the said _____, Testator for his / her Last Will and Testament, in the presence of us, who in his / her presence and in the presence of each other have, at his / her request, hereunto subscribed our names as witness of the execution hereof this ____ day of _____, 2__; and we hereby certify that at the time of the execution hereof we believed the said Testator to be of sound and disposing mind and memory and not under duress or constraint of any kind; and that each of us then attested the Will, at the Testator's request, in the presence of the Testator and each other.

Name of Witness:

Residing at _____

Date

Name of Witness:

Residing at

Date

Subscribed and sworn to before me
this _____ day of _____, 2____.

Notary Public

IN WITNESS WHEREOF, I have hereunto set my hand and seal [signature] to this, my Last Will and Testament, consisting of four (4) typewritten pages, on the margin of each of which I have affixed my signature for better identification on this _____ day of _____, 2____.

(SEAL)

The basic items needed in my will are these:

1 - The first sentence or opening statement identifies me by name, gives my residence, and states that I am knowingly making my will.

2 - I must make it clear that I am revoking any previous wills or codicils I may have made. (A "codicil" is a later signed paper, adding to a previously made will.)

3 - I direct that, at that time, the prompt payment of my burial expenses, debts, and taxes be paid.

4 - I must provide for the distribution of my estate (that is, everything I own).

5 - If I am leaving any of my estate in trust, I must specify the trustees.

6 - If I have minor children, I must specify who, in case my spouse is not living at my death, is to be the guardian of their persons until they reach majority and who is to be the guardian of their property (if that is to be a different person).

7 - It is important that I designate an executor. He or she will have the job of carrying out my wishes.

8 - I must sign and date my will. Witnesses must sign and say they saw me sign the document I acknowledge as my will, and that they have signed as witnesses in my presence and in the presence of each other. A notary public is not necessary, but extremely helpful.

If my will includes all of the above, it will be upheld in most probate courts in America—unless doubts can be cast upon it, on the ground that I lacked mental competence or was subject to undue influence when I signed. But such an allegation requires evidence of my incompetence at that time.

I, personally, have very few possessions. Including a

checking account, it would all amount to less than \$5,000. But if I had a large number of assets, then I might want to have an attorney prepare my will. In that case, I would need to provide him with the following information:

1 - A complete list of all my assets, including bank accounts, stocks, bonds, business ownership and money owed to me, as well as my more valuable personal effects.

2 - An itemization of all my real estate, together with its value and location, including property I own jointly with anyone (a spouse or others).

3 - A list of all my obligations, including mortgages on my house or business, leases, or debts.

4 - Any inheritances I expect to receive before my death.

5 - A statement of any *instruments*, such as trusts or wills of others, under which I am given a *power to appoint* (that is, the power to designate) to whom certain assets will go upon my death.

6 - A statement of my approximate income and general standard of living for the past several years.

7 - Insurance of all kinds, including numbers and face amounts of the policies, their premiums, and any outstanding loans against them.

8 - Family information, such as the ages and state of health of its members, adopted children, marital problems, family feuds, and black sheep, if any.

A person's will and other important papers should be safeguarded and kept in a place where others can find them, such as safe-deposit box. The following should be kept where it can be found: (1) The location of the will; recent income tax returns; social security card, pension, and group insurance policies; insurance policies, stocks, bonds, and other securities; accounts and passports; safe-deposit vault; military service discharge certificate; deeds, surveys, title reports, and tax receipts; mortgage documents and amounts of outstanding loans; partnership agreements, contracts, and similar documents; notes payable; and copies of notes signed. (2) Certain names and addresses are also needed in that file: one's attorney, accountant, employer, insurance companies and agents, stockbrokers, banks, real estate, mortgagee, businesses owned in part or in whole, debtors, and creditors.

Interestingly enough, most people do not realize that the law does not require fancy burial expenses or even a special casket. The law requires only that the body be buried in a cemetery—in a container or cremated. The casket need not be metal or expensive hardwood; it can be made of pine or even cardboard. Unless the burial is delayed and the family wishes viewing, no embalming is usually required. The law normally requires that the body be buried in a container, within a certain number of days, or cremated. Embalming is done if death was from a communicable disease or the body is to be shipped across state or international boundaries. No limousines and all the rest are required.—*vf*

For much more information on preparing for one's final days, and the funeral beyond, you are referred to the present author's low-cost book, *Cut Funeral Costs*, which can save you a large amount of money.

PILGRIMS REST

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