

# LawFacts

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What you should know about.....



## Wills

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### What is a will?

A will is a document that sets forth how a person's probate property will be distributed upon death. To be valid, a will must meet certain formal requirements as provided by appropriate state laws.

### Who may make a will?

Any person who is at least 18 years old and of sound mind may make a will in Ohio.

### How is a will made?

With limited exceptions, a will must be written and signed. A will must be witnessed by at least two persons in a special manner provided by law, and it must be executed in strict accordance with the law. The easiest way to ensure that these conditions are met is to have the signing of the will supervised by an attorney.

### May a will be changed?

A will may be changed as often as the person who wrote it wishes. Changes are frequently made by the simple device of an addition called a *codicil*. Changes to a will often result from changes in circumstances after a will has been made, such as tax law changes, marriage, birth of children, divorce or even a substantial change in the nature or amount of a person's estate. All changes in circumstances require careful analysis and reconsideration of all provisions of a will and may make it advisable to change the will to reflect the new situation. However, changes should not be made without the assistance and advice of a lawyer to ensure changes will be valid and will not adversely affect other portions of the will.

### How long does a will last?

A will is effective as long as it is not revoked. A will is most often revoked by the execution of a new will or codicil replacing the old, or when the person who made the will destroys it with the intent of revoking it.

### Does a will increase probate expense?

No. It costs no more to administer an estate when a decedent leaves a will than when there is no will. Often it will cost less. When there is a will, the executor distributes the estate to the parties named in it. When there is no will, the probate court must determine who the legal heirs are and then distribute the estate to them. In either case, administration under the supervision of the probate court is necessary.

A will may reduce expenses of administration in a number of ways. A will can reduce taxes and expenses by taking advantage of the *charitable or marital deduction* provisions of federal and Ohio estate tax laws. In many situations, a will can also reduce costs by waiving the requirement of a fiduciary bond for the executor. These examples illustrate that a will can save money for you and your family if it is drafted by a lawyer who is trained in this area of the law.

### **How large an estate is necessary to justify a will?**

Everyone who owns any real or personal property should have a will regardless of the present amount of the estate. Remember that a will provides for the way that a person's probate property will be distributed upon death, regardless of size and value. Further, estates grow in value almost unnoticed through the repayment of mortgages, appreciation of stocks and other investments, inheritances from relatives, and other sources.

### **May I dispose of my property to any person or entity I choose under my will?**

Yes. However, Ohio law gives a surviving spouse and minor children certain rights over property that cannot be defeated by a will. Talk to a lawyer about these rights.

### **What happens to property held in the names of both husband and wife?**

Property held in the names of both husband and wife may not automatically pass to the survivor upon the death of one of them. However, there are some forms of ownership in which property does pass to the survivor automatically. Sometimes it is to your advantage to hold property in this manner. Other times it can be disadvantageous. An attorney can advise you as to the type of property that can be held in joint tenancy with the right of survivorship, or in other ways that avoid probate, and the advantages that you might gain. For more information on ways to avoid probate, see the following Ohio State Bar Association publications: "What you should know about . . . Living Trusts" and "What you should know about . . . Probate."

### **Does a will let me avoid estate taxes and other 'death' taxes?**

Whether or not there will be an estate tax depends primarily upon the value of a person's estate. Deductions also are available for debts, expenses of administration, or distributions to a surviving spouse or charity. However, a properly drafted will might reduce the amount of taxes that have to be paid. An estate-planning lawyer is skilled not only in the laws of wills and property, but also must be familiar with both state and federal estate tax laws.

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

When a person dies without a will, or dies *intestate*, as the law calls it, the property of the deceased is distributed to your nearest family members according to a formula fixed by law. In other words, if you do *not* make a will, you do not have any say about how your property will be distributed.

In Ohio, for example, if a husband dies without a will, leaving two or more minor children, and the surviving wife is not the natural or adoptive parent of any of the children, the wife would receive \$20,000 plus one-third of the remainder of the estate, and the balance would be given to a guardian for the minor children. The widow or other suitable person would need to be appointed guardian of the children by the probate court and would need to give the court a surety bond. When each child reaches age 18, his or her share of the guardianship estate would be required to be made fully available to the child, regardless of his or her maturity level. Such proceedings can be expensive and can create legal problems that might have been avoided had the husband made a will.

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

If you make a will, you may name the person you want to manage the administration of your estate (the *executor*). If you do not make a will, the probate court will appoint someone (the *administrator*), whom you may or may not know, to handle your estate.

### **Can life insurance take the place of a will?**

No. Life insurance is only one kind of property that a person might own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the disposition of the insurance proceeds. If the policy is payable to the estate of the insured, the disposition of the proceeds may be directed by a will; however, this would subject the proceeds to possible Ohio estate tax, depending on the size of the estate. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, particularly in the area of estate planning.

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

No sensible person would engage "just anyone" to fill teeth, take out an appendix, or adjust a sensitive and complicated instrument. The person who wants these services performed with a minimum of risk to self and property will engage a trained professional person.

The drafting of a will requires professional judgment. A lawyer can help you avoid pitfalls and choose the course best suited for your situation.

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*The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.*

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*Reproduced and Distributed by: Kenneth R. Sechler, Attorney at Law  
6135 Memorial Drive, Suite 105A, Dublin, Ohio 43017-9005  
614/889-0234 \* ksechler@sechlerlaw.com \* www.sechlerlaw.com*