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Why Should We Write a Will?

¹ALSO ADMITTED IN OHIO

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Clients often ask us: "Why do I (we) need to write a will?" Most individuals incorrectly assume that their surviving spouse will inherit everything should they die. If you die without a will, the state, not you, will decide how your estate is to be distributed.

For example, if you die without a will in Illinois, your surviving spouse will only inherit one-half of your estate. The other half will pass in equal shares to your children. The court, and not you, will select a person to administer your estate. Preference is given to surviving spouses and family members, but they must know to petition the court to be appointed. Sometimes, there are reasons not to have a surviving spouse or family member serve, but the court will generally be unaware of special considerations absent a will. A court selected administrator may not be as sensitive to the needs of your family as one which you would have selected. Also a court selected administrator may not be aware of specific family circumstances that would require your estate be handled in a certain way. The court may even appoint a guardian to handle funds for your children other than your spouse. Even where the guardian appointed is the surviving spouse, the court will require your spouse to report to the court once a year to account for the expenditure of funds on behalf of your children. Although the purpose of safeguarding children's inheritance is admirable, this requirement is time consuming as well as costly. The court will charge your estate for the costs of monitoring the distribution of your estate until your youngest child reaches the age of 18.

Many persons feel they cannot afford to write a will. However, once they realize the potential costs involved in not writing a will, the reverse becomes the case: they can't afford to die without a will. If the court appoints an administrator or guardian, these individuals will charge the estate for their services. Had a trusted friend or family member been appointed to handle these same duties, he or she may have waived a fee or charged the estate a far smaller amount than a court selected administrator or guardian. By naming one's own administrator, the costs of a performance bond may be waived, which may result in a substantial savings to the estate.

If you die without a will, your spouse may not be able to sell some of your property without the consent of the children, or in the case of minor children, the consent of the probate court. As stated above, the surviving spouse will be required to give an annual accounting to the court. The spouse may also be required to post a bond which may be an unnecessary additional expense to your estate. Another potential danger is that children will inherit one-half of the estate outright as soon as they reach the age of 18, without regard to the needs of the spouse and without being subject to question by anyone. Given the financial immaturity of many, if not most, 18 year olds, this could have costly consequences. A will is also the only way you can guarantee that a friend, distant relative or charity will inherit from your estate.

Writing a will is generally the single most important estate planning tool. Individuals often feel that they do not have a large enough estate to write a will. These persons often forget that the home that they paid \$50,000 for twenty years ago is now worth over \$100,000 or \$200,000. Many individuals often put off writing a will because it is uncomfortable for them to think about their own death. It is not uncommon to find people who fear writing a will because they fear dying and feel that, somehow, writing a will may hasten their death.

A will allows you to speak from beyond the grave and gives you the power to determine how your estate is to be distributed. In addition to giving you the power to direct the distribution of your estate, writing a will is an expression of love for your family and friends. If you care about your family, you want to take the steps necessary to share the things you worked so hard for in your lifetime with the people you love and care about the most. Writing a will not only benefits the people you love, but you will benefit as well. Most of our clients tell us that they enjoy a sense of peace of mind once they have written a will. We recommend that you take steps now to draw up a will that reflects your true intentions. A well planned estate plan can save your estate probate costs, enhance the return on your investments, avoid or decrease estate taxes, and most important of all, save your family the needless hardship of unnecessary squabbling, wounded feelings, divided families and litigation.