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The Anatomy of a Simple Will, and Why You May Need One

Everyone should have a will. Even people of modest means should at least have a simple will, for two reasons:

- To name an executor (sometimes also referred to as a "personal representative") to wrap up their affairs, and
- To specify "who gets what" from their property, to avoid family squabbles.

In the absence of a will, the state law of intestacy determines how the decedent's (the deceased person's) property is to be distributed. In many situations, the law dictates exactly what the decedent would have wanted anyway if he or she had taken time to write a will. But many times the law does just the opposite.

Too often, one mistakenly thinks that one's heirs know what they are "supposed" to do, know what they're to get, or will act appropriately. Family squabbles regularly occur because siblings cannot agree on how to distribute mom's candlesticks, ashtrays, or microwave oven. When big-ticket items are involved, things can get bitter and ugly. A will, therefore, should be used to either name a particular person to receive each item of property or to set out a procedure for making the distribution—e.g., alternating selections by the two children, beginning with a coin flip.

Although some states include a form for a simple will in their statute books, there is no particular format required. The design of the document is usually straightforward, even if the language used by lawyers is a bit stilted. The text generally runs 2–5 pages. Keeping in mind that such a "simple" will may not be what you need at all, look over this description of a typical simple will structure just for reference purposes:

- A paragraph stating that the will-maker is of sound mind and intends this document to be his or her "last will and testament."
- A paragraph naming the executor—there should be an alternate, too.
- Nomination of guardians for any minor children in the event both parents die prematurely. A guardian should be named for the person and for the property of each child. (These roles can be filled by the same person.) Note that whoever is nominated still must be approved and appointed by the court.
- A provision that the executor first pay all the decedent's debts and taxes.
- Specific bequests—if any—to named individuals, e.g., "Daughter Sally gets my wedding ring; daughter Jane gets my gold necklace."
- Disposition of the remainder (residue) of property, which consists of everything that remains after taxes, bills, and bequests.

Married people with children often write wills that are "mirror images" of each other: "If I die first, everything goes to my spouse. If my spouse has already died, I give everything to my children, in equal shares, per stirpes." Wills of this type are sometimes referred to as "I love you" wills.

The will can set out an alternating selection process, to be supervised by the executor. If no procedure is specified, it is the executor's job to conduct the property distribution as he or she sees fit—as long as it is completely fair to all beneficiaries. Too often, the executor is an adult child who is also a beneficiary and who abuses the position by giving himself or herself preference in some way. This is strictly prohibited by law, but it is the basis of many probate horror stories.

The "pay all my debts and taxes" clause seems straightforward, but it frequently leads to an unsuspected problem: since many transfers of property at death take place completely outside the probate system (e.g., joint property, retirement accounts, life insurance, etc.), this clause sometimes results in one beneficiary being singled out for these expenses. The decedent's "debts and taxes" all must come out of the "hide" of the beneficiary (e.g., a child) who inherits probate property, while other property, which may pass outside of probate to another child, is free and clear. This is one of many scenarios that make it wise at least to consult an attorney about your will.

People find that preparing a will provides great peace of mind, but they often fear that preparing one is complex. A simple will, however, is often merely a structured list of straightforward tasks designed to wrap up their affairs.

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