

## **WHERE THERE'S A WILL THERE'S A WAY!**

### **SHOULD I HAVE A WILL?**

A person does not have to be wealthy or aged to do some serious thinking regarding an Estate plan. If you own a car, have an interest in a home, a little cash in your checking account or perhaps some household furniture and kitchen appliances, you have an Estate. Often a person with a small or modest Estate is most in need of a plan to provide for the proper care of survivors at death.

### **WHAT IF I DIE WITHOUT A WILL?**

If you die without a will, Oklahoma law effectively writes one for you. The laws of descent and distribution set a rigid formula and make no exceptions for those in unusual need. Your Estate still must be administered in Court, and many times the cost will be greater than if you had planned your Estate with a will.

If you die without a will, leaving a surviving spouse and children, your spouse would take only  $\frac{1}{2}$  of the Estate. The remaining  $\frac{1}{2}$  is divided among your children. If your children are minors, your surviving spouse, in order to use their portion of your Estate for their support or education, would either have to be appointed guardian of the children by the Court, or have someone else appointed, give a bond, make accountings to the Court and obtain the Court's permission for many routine transactions. This will result in considerable expenses as well as legal difficulty.

OF PARTICULAR IMPORTANCE ARE ANY SPECIAL INSTRUCTIONS YOU HAVE RELATING TO YOUR BURIAL. Without a will, your family will make all of the decisions about your funeral. With a will, you can decide. For example, you can choose to have your colors/cut buried with you, leave specific instructions for disposition of your bike, and/or determine the type of funeral service that will be held for you.

### **WHAT IS A WILL?**

A will is a written instrument by which you provide the disposition of your property after your death. In Oklahoma, if you are of sound mind, age 18 years or over, you may dispose of your property at will.

## **MAY I DISPOSE OF MY PROPERTY AS I WISH BY WILL?**

Almost, but not quite. Under Oklahoma law, a married person may not completely exclude the surviving spouse, since the spouse may elect to take a certain portion of the Estate despite the will. If your will does not name your child or indicate that the child has been considered, then the child may have certain rights. Your lawyer can explain these restrictions and show you how to accomplish your desires.

## **MAY I CHANGE MY WILL?**

A will may be modified or added to or entirely changed at any time before your death. You should take steps to revise your will whenever changes in the size or circumstances of your family or Estate means that your old will no longer fits your requirements. All changes, to be effective, must be made in strict conformity with the law. Any change made in a will by erasure or interlineation is likely to be invalid.

## **DOES IT COST MORE TO HAVE A WILL?**

No, when a person dies without a will, property must be administered. When a person dies with a will, the will must be probated. However, a will frequently reduces expenses. If you make a will you may designate your Personal Representative after death. You can empower the Personal Representative to handle the Estate and give him broad discretion to sell property and perform other functions without Court permission. You may also relieve your Estate of the necessity of payment of a bond for your Personal Representative.

## **IS JOINT TENANCY A SUBSTITUTE FOR A WILL?**

Two persons may own property together in such a way that upon the death of one of them, the property goes to the survivor independently of the provisions of a will and without administration if there is no will. This form of ownership is call "Joint Tenancy." In some cases and for certain kinds of property, Joint Tenancy is a useful legal device, but countless problems arise from its indiscriminate use. There are tax hazards in Joint Tenancy as well as other complications and expenses. Your attorney can advise you as to the beneficial use of Join Tenancy. Joint Tenancy is not an adequate substitute for a will in most cases.

## **HOW DO I MAKE A WILL?**

A will must be prepared within the legal technicalities prescribed by the law. These technicalities are for you and your heirs' protection, but they must be observed. The drafting of a will requires the professional learning, skill and experience obtained only by study, training and practice. Only the practicing lawyer can perform this service properly. Attorneys usually charge on the basis of time

spent in preparation of a will. A few hours of an attorney's time now may save your beneficiary substantial losses and may avoid additional expense A-or guardianship of minor children. Your attorney will be glad to discuss the charge for his services with you.

### **IS A HANDWRITTEN WILL VALID?**

A. Under Oklahoma law a Will that is entirely written, dated and signed in your own handwriting, and which contains no typed or printed portion, is valid. or printed portion, is valid. The problems resulting from this type of Will are not so much in what the person writing the Will says as in what he fails to say. Without the advice of an attorney most people who prepare handwritten Wills fail to include provisions that address the naming of a personal representative, the bond, the source for payment of estate taxes, and the specific powers the personal representative shall have, as well as the problem of simultaneous death of the drafter and a beneficiary named in the Will. Your lawyer can explain these matters and show you how to accomplish your desires with the best tax consequences and the elimination of extra court hearings because your Will fails to address certain issues.

### **WHAT IS A LIVING WILL?**

A. A Living Will is that portion of a document called an Advance Directive for Health Care. In the Living Will portion of such document, if you have a terminal condition or if you become persistently unconscious, you may direct that life-sustaining treatment shall be withheld or withdrawn if such treatment would only serve to prolong dying, and if your attending physician and another physician determine that you have an incurable and irreversible condition that will cause your death within six months even with life-sustaining treatment. As part of this Living Will you may also make an election whether you desire the artificial administration of food and water under these circumstances.

### **WHAT IS A REVOCABLE OR LIVING TRUST AND WHAT ARE IT'S ADVANTAGES INSTEAD OF A WILL?**

A. A Revocable or Living Trust is a written document which becomes effective while you are living, unlike a Will which takes effect after your death. A Trust can be set up to manage your assets for your benefit during your lifetime, or in the event of your illness or incapacity. After your death, the trust document can provide for the distribution of any remaining assets to those persons or entities you have chosen or provide for their continued management by a trustee for many years, with ultimate distribution as you direct. A Revocable Trust is a private document the 'contents of which are known only by you and the person you have chosen as your Trustee. Such a Trust is unlike a Will which if probated requires the list of your assets and their values to be public record at the courthouse. When a Revocable Trust is fully funded, by conveying all of your assets into your trust in your lifetime, no probate of your estate is required. You may amend or revoke your Revocable Trust during your lifetime so long as you retain the capacity to do so.

## **WHAT ARE THE ADVANTAGES OF HAVING A WILL INSTEAD OF A LIVING TRUST?**

A. Generally the cost to prepare a Will is less than the cost of a Revocable or Living Trust. Basically, they are two separate approaches to estate planning. A Trust may be more beneficial than a Will in providing for your possible disability or incapacity. And, the Trust may also avoid a probate of your assets, if you follow certain necessary steps. Your lawyer can advise you about those steps.

You should consult with an attorney who works extensively in estate planning for an explanation of the advantages and disadvantages of Joint Tenancy, Wills and Trusts. Keep in mind although, you can include in a Will provisions to establish a Trust. It is usually no longer a simple Will and the costs could approach what a Living Trust would have cost. If you sign a Trust, your attorney should assist you by explaining the steps necessary to put your assets into the Trust. Either a Will or a Trust will dispose of your property following death.