

LAST WILL AND TESTAMENT

While most individuals are familiar with the concept of a Will, a significant portion never make one or consult a lawyer to draft one for them

A Will is a document by which the person making the Will, the Testator, disposes of his or her assets upon death. In addition to directing the ultimate distribution of the assets, the Will may designate Guardians for minor or incapacitated children, and appoint an Executor to probate the Will. Probate is the process by which the Executor and the court oversee the distribution of the estate.

A Will can also be used by wealthy individuals for tax planning, by utilizing various forms of testamentary trusts. Testamentary trusts may also be beneficial for individuals without great wealth. For example, a Testator can create testamentary trusts for descendants, so that money is kept in trust for minor or incapacitated children, or to protect family wealth from the creditors and potential divorces of descendants.

Dying without a Will is called dying “intestate.” Through intestacy, assets pass to heirs at law. While the heirs at law may not be any different than the people one would designate as the beneficiaries of the Will (i.e. a spouse or children), dying intestate exposes the testator’s surviving family to otherwise avoidable and significant administrative and financial burdens. Without a Will, the duration, cost, and the level of involvement of the attorney and the court over the distribution of the assets increases significantly. Simply put, the costs associated with creating a Will is insignificant in comparison to the financial and administrative burdens that arise from dying intestate.

While creating a Will is an important first step, there are several times when the Will should be reviewed. It is important to review a Will upon the death of a family member, the inheriting of assets, a change in wealth, getting married, having children, and moving states, as the Will must be valid in the state of domicile. It is also vital to review the Will every two years to assure that those individuals you named as fiduciaries (i.e. Executor, Guardians or Trustees) are still those you wish to serve in such roles.