

Frequently Asked Questions for First Responders

IS WILLS FOR HEROES REALLY FREE?

Absolutely. In fact, attorney volunteers are specifically instructed not to solicit your business. Also, because we do not keep your personal information, we have no way of getting back in touch with you once your Will is completed.

WHAT IS AN ESTATE PLAN?

An Estate Plan has a lasting effect on you and your family. What you do now affects what they may have after you die. Your plan may include one or more of these: Will; Advance Medical Directive (“Living Will”); Durable Power Of Attorney for Health Care; Mental Health Power of Attorney; and Life Insurance - especially beneficiary designations. You must plan carefully and that requires you think about your situation, family, and desires. Do so now while you have the time to reflect.

WHAT IS A WILL?

A Will is a legal document that states your desires concerning what will happen to your assets after your death. A Will also contains other specific directions from you concerning who is to implement your instructions and, perhaps, who will care for any minor children you may leave behind. A Will is especially important for parents with young children. You should name a guardian (and preferably a successor) for your children in case the natural parent also dies while the children are minors.

WHAT IS THE DIFFERENCE BETWEEN A WILL AND A TRUST?

A Will is simply a way for someone to express how they want assets distributed upon death, nominate a person to serve as Personal Representative, nominate a guardian for his/her minor children to serve if the children’s other parent is dead, and state marital status and list the children, if any.

A Trust is a contract between the Trustor and Trustee. The Trustor is the person that creates the trust; the Trustee manages the trust. The beneficiary of the trust is typically the Trustor during the Trustor’s lifetime. A trust can include more detail about your goals in case you become disabled and how you want your beneficiaries to receive your assets upon your death (in trust, outright, or over a certain term). This is especially important for planning for children with disabilities, for children that can’t handle money and for children that you want protected from creditors and failed marriages.

Many goals can be met using either a trust or Will. You should consult with an estate planning attorney about whether a trust is appropriate for your situation. Signing a Will today puts your current goals in writing. If necessary, you can always modify your Will later.

WHY SHOULD I MAKE A WILL?

If you die without a valid Will, the laws of your state of legal residence determine what happens to your assets. Your wishes will not be considered and therefore your assets may not go where you want them to go.

ARE ALL OF MY ASSETS CONTROLLED BY MY WILL WHEN I DIE?

No. For example, proceeds of life insurance policies and retirement plan assets are distributed as you direct in a beneficiary designation form and a bank account that you own jointly with another person will, normally, go to the other joint owner. It is extremely important that you coordinate the disposition of these assets with the disposition of the assets of your estate, as provided for in your Will.

WHAT IS PROBATE?

Probate is a court procedure by which a Will is proved to be valid or invalid. The probate process accomplishes the transfer of your assets from your name to your beneficiaries under your Will and gives your creditors and taxing authorities an opportunity to be paid from your assets.

A Will does not avoid probate. With a probate, the Will, if any, is submitted to the Court with paperwork asking for a Personal Representative (PR) to be appointed. Upon appointment, the PR collects the assets, notifies heirs and creditors, pays any taxes and creditors and distributes the remaining assets, if any, to the beneficiaries.

Probate only includes assets in your own name alone without a beneficiary designation. If there are not enough assets in your probate estate, non-probate assets may be brought back in to pay expenses.

All Wills do not have to go through the probate process - just the Wills where a probate is opened. Probate may not need to be opened if all assets pass by beneficiary designation. A small estate affidavit can be used to collect cars and personal property if the estate is under \$50,000. Real estate can be transferred after 6 months by affidavit if real estate equity is under \$50,000.

Practically, however, the beneficiaries may want to pay the creditors. Creditors can open a probate after 45 days and can pull in non-probate assets and try to collect from the people that used an affidavit to collect personal property or real property.

There are expenses to probate that people do not like to pay (attorneys fees, court costs, PR fees) and time – it usually takes one to two years to handle a probate and assets can be tied up for that time period.

DO I NEED TO BE PRESENT TO HAVE MY WILL PREPARED?

Yes.

WHAT IF SOME OF THE ANSWERS ON MY QUESTIONNAIRE ARE DIFFERENT THAN MY SPOUSE / PARTNER'S ANSWERS?

This can happen. It is best to talk things out with your spouse before coming to do a will. If you or your spouse would be more comfortable, we usually have enough attorneys that you and your spouse could each see a different attorney.

DO I NEED TO BRING ANYTHING WITH ME TO THE WILLS DAY?

Yes. You need to bring your estate planning questionnaire, filled out to the best of your abilities. If you are going to do a specific bequest of any real estate, please bring the deed of trust or some other document showing the legal description of the real property. Also bring government identification with your picture on it because you will be signing your Will in a formal ceremony with a Notary.

WHAT IS A LIVING WILL?

An advance medical directive or "living will" is separate from your Will, but may be an important part of your estate plan. It states that in the event you have a terminal, incurable medical condition and your life is only being prolonged by means of artificially provided life support, and if you cannot communicate your desires, the living will "speaks for you" so your doctors know and can act upon, your desires about medical life support. Once executed, the document is effective until you revoked it, which you may do at any time by physically destroying it or revoking it.

WHAT IS A HEALTH CARE POWER OF ATTORNEY?

A Health Care Power of Attorney (POA) permits you to name another person or persons who will have the power to make health care decisions for you if you are not able to do so for yourself.

HOW DOES A HEALTH CARE POA DIFFER FROM A LIVING WILL?

The Health Care POA appoints someone you name to make medical care decisions for you if you cannot make your own medical decisions. It applies to more situations than the living will, which was discussed above. The Health Care POA gives the person you name as your agent the authority to make a wide range of medical decisions on your behalf. Your agent, once you are unable to communicate your wishes, is given the power to act on your behalf to make health and mental health decisions (outside of a locked facility) It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care you receive.

HOW LONG WILL IT TAKE TO FINISH MY WILL?

Our experience is that it usually takes approximately 1 hour from start to finish to complete your Will and other estate planning documents.

WHAT IF I WANT TO CHANGE MY WILL AFTER IT IS DONE?

You can change your Will or any other estate planning document Wills for Heroes provides at any time. Unless your department is planning another Wills Day, we strongly recommend that you consult with an experienced estate planning attorney to before making any changes.

You should consider changes to your Will or other estate planning documents whenever you have a ‘life event’ – for example, a birth, death, marriage, or divorce in your family or in the family of anyone that you have named or included in your estate planning documents.

WHAT IS A SPECIFIC BEQUEST?

A specific bequest is a statement in the Will that a certain asset or specific amount of money will be given to beneficiary(ies). You may make specific gifts of cash, real estate, or tangible personal property to specific people or charities in your Will. However, these bequests will be distributed first and may deplete your estate. Also, specific bequests lapse if the property given cannot be found at your death. Therefore, if you make specific bequests, only give property or amounts of cash that you are reasonably sure you will have when you die. If you make no specific bequests, all of your property will pass to your primary beneficiaries, or what we call residuary beneficiaries.

DO I HAVE TO DECIDE WHAT SPECIFIC BEQUESTS TO MAKE RIGHT NOW?

IT IS USUALLY A GOOD IDEA; HOWEVER, THIS CAN BE DONE IN VARIOUS WAYS.

WHO SHOULD RECEIVE A COPY OF MY ESTATE PLANNING DOCUMENTS?

(e.g., primary care dr.? neighbor? persons in will?)

Also, if there is any language someone who has medical power of attorney should use in refusing medical intervention on behalf of the will signer, we should provide that--like a script on what to say to emergency personnel who show up at the scene.

DOES MY WILL STILL APPLY IF I MOVE OUT OF OKLAHOMA?

YES.

WHAT ABOUT ORGAN DONATION?

This is usually done by an advance directive of healthcare and does not necessarily need to be decided at the execution of your Will. However, Wills For Heroes does offer advance directives for those who wish.

WHAT IF MY ESTATE EXCEEDS THE \$750,000 CAP FOR THIS PROGRAM?

We encourage you to still avail yourself of the other free services that Wills for Heroes offers – a Living Will, Health Care Power of Attorney, and (coming soon) a Financial Power of Attorney. We are also in the process of forming a reduced-fee panel of estate planning attorneys that you can contact for an estate plan at your convenience.