

WILLS:

WHAT IS A WILL?

A Will is a document which provides the manner in which a person's property will be distributed when he/she dies. A person who dies after writing a Will is said to have died testate. If someone dies without writing a Will, they have died intestate.

WHO MAKES A WILL?

In Alabama, the maker of a Will must be:

1. At least 18 years old;
2. Of sound mind; and
3. Free from improper influences by other people.

HOW DO I MAKE A WILL?

A Will must meet certain requirements set by the State to be considered valid. In Alabama, the following requirements must be met:

1. The Will must be written
2. The Will must be signed by the maker.
3. The Will must be witnessed by two people in the manner required by law.
4. Self-proving wills must be notarized.

MAY I DISPOSE OF MY PROPERTY IN ANY WAY I DESIRE BY MAKING A WILL?

Almost, but not quite. There are some limitations set by law to avoid placing hardship on the people who survive the deceased. For example, a married person cannot completely exclude the other spouse from sharing in the estate. A lawyer can best explain all the limitations.

HOW DO I KNOW IF I NEED TO WRITE A WILL?

Any amount of property which you own constitutes your estate. Generally, the size of your estate and your family circumstances determine whether you need a Will. An estate does not have to be any particular size to justify a Will. If you have young children, or property which you would like to assure will be given to certain people, then you should consider writing a Will.

WHEN DO I NEED TO WRITE A WILL?

A Will should be written while the maker is in good health and free from any emotional distress. A prudent person does not wait for a catastrophe or other compelling reason to make a decision.

WHO SHOULD DRAFT A WILL?

There is no requirement that a person consult a lawyer before drafting their own Will. However, the proper drafting of a Will can be a delicate operation, and it is best to consult someone who has experience. A lawyer can make sure that your Will is legal, and that your property will be given to the people that you intended. A lawyer can also help construct a Will so that your family may save money in administering the estate, and reduce any taxes.

IS A WILL EXPENSIVE?

A lawyer will usually charge for a Will according to the time spent in preparing the Will. If you have a small estate and a simple plan for distributing your property, then your Will should cost less than one for a large, complex estate with several people receiving property.

MAY A WILL BE CHANGED ONCE IT IS WRITTEN?

A person may change his/her Will as often as (s)he desires. However, the changes must meet the same requirements listed above for the original Will. It is advisable to consult a lawyer who can assist you in making changes to your Will.

HOW LONG IS MY WILL "GOOD"?

A properly written and executed Will is "good" until it is changed or revoked. Writing a second Will usually revokes the first Will. However, if there is a change in your estate or your family makeup, you may consider changing your existing Will or writing a new Will. For example, if you sell your house you may need to change your Will to reflect the change in your estate.

WHAT SHOULD I DO WITH MY WILL ONCE IT IS WRITTEN?

Once you have written your Will, you should keep it in a safe place, such as a safety deposit box at a bank which can be opened by someone else upon your death. You should also let your family know where the Will is so that they can find it when you die.

PROBATE OF WILLS:

WHAT DOES PROBATE OF A WILL MEAN?

Probate of a Will is the administration of an estate to ensure that all property is disposed of properly. It is the Probate Judge's responsibility to make sure that all of the laws in Alabama regarding the distribution of estate are followed.

WHO SHOULD PROBATE A WILL?

Upon the person's death anyone named in the Will either as personal representative or as a recipient of property, or any other person with a financial interest in the estate, or the person who has possession of the Will may have the Will proved before the proper probate court. Any person in possession of the Will must, by Alabama law, deliver the Will to the Probate Court or to a person who is able to have the Will probated. A person in possession of the Will can be required to produce it.

WHERE SHOULD A WILL BE PROBATED?

Generally, Wills must be filed for probate in the county where the deceased lived.

WHEN MUST A WILL BE FILED FOR PROBATE?

To be effective, a Will must be filed for probate within five years of the date of the testator/trix's death.

DO I HAVE TO HAVE A LAWYER?

The complexity of handling estates normally necessitates having an attorney since the Probate Judge cannot advise you of the law or provide you with forms.

DO I NEED TO PROBATE THE WILL?

Yes, the Will must be probated to have legal effect. Before deciding not to probate a Will one should consult an attorney.

ADMINISTRATION OF AN INTESTATE ESTATE:

WHAT HAPPENS TO MY PROPERTY IF I DO NOT WRITE A WILL?

If someone dies without writing a Will, they have died intestate. Each state has specific laws governing the distribution of property when a person dies intestate, and most laws are generally the same. The laws of Alabama are shown below, but you should remember that these laws may not apply if the deceased was not a resident of Alabama, or if the property is located in another state. In this list, "issue" means all of the people who have descended from the decedent. This includes children (both natural and adopted), grandchildren (both natural and adopted), great grandchildren, and so on.

1. Property going to the surviving spouse:

- a. entire estate if no surviving issue or parents of decedent;
- b. first \$100,000, plus $\frac{1}{2}$ of balance of estate if there is no surviving issue but there is surviving parent(s);
- c. first \$50,000, plus $\frac{1}{2}$ of balance of estate if there are surviving issue all of whom are also issue of surviving spouse; or
- d. $\frac{1}{2}$ of estate if there are surviving issue who are not issue of the surviving spouse.

2. Property not going to surviving spouse:

If there is no surviving spouse, or there is property left after the spouse receives his or her share, it passes under the following priority: All of the property passes to the issue, unless there are none. If none, all passes to the parents. If neither parent is living, the estate passes to siblings, and so on under this priority;

- a. issue
- b. parents
- c. brothers and sister
- d. grandparents
- e. aunts and uncles
- f. cousins

Steps in Probate of an Estate:

1. Petition filed
2. Inventory of the estate within 2 months.
3. Bond, equal to the aggregate capital value of the property of the estate, plus one year's estimated income from the estate.
4. Notice must be given to all heirs.
5. Letters of Testamentary or Administration granted.
6. Notice to file claims must be published once a week for 3 weeks and individual notice given to anyone known to have a claim against the deceased.
7. Claims must be filed generally within 6 months.
8. Generally, the estate cannot be divided until all claims and expenses have been paid which is at least six months.
9. Court must approve attorney's fees.

WHAT ARE THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE?

1. Without court authorization the personal representative may:

- a. retain assets
- b. receive assets
- c. perform deceased contracts
- d. satisfy written charitable pledges
- e. deposit funds in financial institutions
- f. abandon valueless personal property
- g. allocate expense to income
- h. pay assessments
- i. hold securities
- j. insure assets
- k. borrow to protect estate
- l. settle with debtors
- m. settle claims
- n. pay taxes and expenses
- o. sell or exercise stock options
- p. enter lease up to one year
- q. vote stocks
- r. employ attorneys, auditors
- s. prosecute or defend claims
- t. continue unincorporated business
- u. incorporate the business
- v. limit liability

(Court may limit powers of personal representative)

2. With prior court authorization the personal representative may:

- a. abandon an estate asset
- b. make repairs or demolish improvements
- c. subdivide, dedicate land
- d. enter lease greater than one year
- e. enter mineral leases
- f. sell real estate
- g. pay compensation of personal representative

THIS INFORMATION, WHICH IS BASED ON ALABAMA LAW, IS ONLY TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

TAMMY BROWN
Judge of Probate
Cullman County