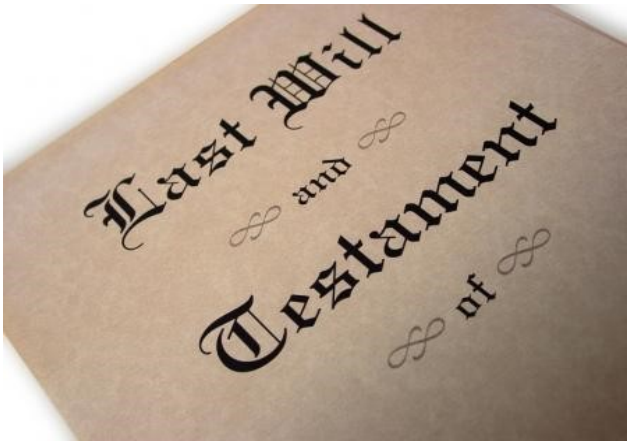
37 THINGS PEOPLE "KNOW" ABOUT WILLS THAT AREN'T REALLY SO



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Why Don't More People Make Adequate Estate Plans?

Why is it that many who spend a lifetime earning, saving, and accumulating property do not take even the simplest steps to determine how their assets will eventually be distributed? Surveys indicate that the majority of adults do not even have a basic will.

Some have speculated that failure to plan is based on a lack of knowledge. But that may not be the problem at all. The real problem could be that people believe they "know" things about wills that are simply not true.

In this booklet we examine a number of "common sense" ideas and opinions about wills and other estate plans that are often wrong.

We hope you find this information helpful as you plan for your future financial well-being and that of your loved ones. We will be pleased to assist you and your advisors where possible with the charitable dimension of your plans.

1. “Only people with children and others who depend on them need wills.”

WRONG. Even people with *no* dependents need wills if they want to determine who eventually receives their property.

2. “Only wealthy people need wills.”

WRONG. If you have any assets at all, you need a will, even if your estate is modest, your heirs few, and your wishes simple.

3. “Only people with troublesome relatives need wills.”

WRONG. In the absence of a will, even family members with the best intentions can be confused as to what your wishes may have been.

4. “When people die without wills, the law usually distributes their property in about the same way they would have.”

WRONG. The law distributes property according to rigid and inflexible rules. Spouses and children sometimes receive equal amounts regardless of need, and no provision is made for distributions to friends or charitable interests.

5. “Couples who hold their property jointly with right of survivorship don’t need wills.”

WRONG. Although joint ownership can be sensible and help reduce the expense and delay of probate, both spouses will typically still need wills to distribute property that is not jointly owned.

6. “Only the wealthy or people without close relatives leave substantial bequests to charitable interests.”

WRONG. More and more people with modest estates are discovering that they can make meaningful gifts to favorite charities through their estates and still provide generously for family and other

loved ones. This is especially true as recent changes in the law have made estate taxes less of a consideration and have freed assets for use in other ways.

7. “The laws on wills are pretty much alike throughout the United States.”

WRONG. Laws that govern estate settlement can vary greatly from state to state. That’s why when you move to another state you should always carefully review your will with the help of an attorney in that state. The tax laws that apply to estates may be different in the new state. This is just one factor that should be taken into consideration.

8. “A will is the only method of disposing of property after death.”

WRONG. There are a number of ways to transfer property at the end of your lifetime. You might, for example, create a trust with instructions for disposition of your property. Another option is to title homes and certain other property jointly. Life insurance and retirement plans are typically distributed through beneficiary designations. Even if these other methods are used, however, a will is still considered an important part of a complete estate plan.

9. “The law makes no distinction between real estate and other property.”

WRONG. The law often differentiates sharply between the two. In some cases, a will that distributes real estate must be valid in the state where the property is located, while the will distributing other types of property needs to be valid in the state where the person lives.

10. “A person must be of “sound mind and disposing memory” to make a valid will.”

WRONG. Courts will honor wills made by persons with failing faculties so long as it is clear they had sufficient mental capacity to understand what they

were doing for whom at the time they executed the will.

11. “Any person who has a good memory and is intelligent can make a valid will.”

WRONG. Not if a person is under legal age, or if mental illness has rendered him or her incapable of making sound judgments.

12. “A will made by a person who is mentally and physically sound is valid regardless of its content.”

WRONG. Not if, in making a will, he or she is defrauded or is subject to what the law refers to as “undue influence” by another.

13. “You have to be at least 21 years old to make a valid will.”

WRONG. Most state set 18 as the minimum age.

14. “A person cannot totally disinherit a spouse without just cause.”

WRONG. It can be done. But the surviving spouse may, in some states, file a claim for a “marital share”—a minimum amount guaranteed the spouse under state law.

15. “One spouse always has the same rights to the other spouse’s estate.”

WRONG. In some states, rights will vary depending on a number of factors, including whether property was acquired before or after a marriage.

16. “Once a will is made, nothing can change it except a new will.”

WRONG. A will may be changed in several ways. A marriage, divorce, or birth of a child subsequent to the making of a valid will may automatically grant or take away inheritance rights to or from a spouse or others. Or changes in laws may alter the framework in which a will is interpreted. A codicil

(amendment) added to your will can also alter its provisions.

17. “Children are excluded from an inheritance if they are not mentioned by name in the will.”

WRONG. In most states, a child born after the date of the will receive what he or she would have inherited under state law if there had been no will.

18. “Witnesses must sign the will in the presence of the testator, but not in the presence of each other.”

WRONG. In most states, witnesses must also sign in the presence of each other, and they must be aware that they are witnessing a person’s last will and testament.

19. “Witnesses must be told the contents of the will.”

WRONG. This is not required.

20. “Witnesses must be at least 21 years old.”

WRONG. Anyone can be a witness who is “credible” and “competent,” including children old enough to understand what is transpiring, although some states impose a minimum age.

21. “It doesn’t matter whether witnesses are also beneficiaries of the will.”

WRONG. An attesting witness who is also a beneficiary may be ineligible to receive a legacy, unless there are enough other witnesses to validate the will without that witness.

22. “A handwritten will, unwitnessed, cannot be valid.”

WRONG. In some states, such wills are valid when the testator’s handwriting is generally known by friends and associates and can be identified by them.

23. “Oral wills are never valid.”

WRONG. Such wills can sometimes be valid, but only under certain conditions, such as if a person is dying or is in the military on active duty during a war. A state may require that such a will be made before three competent witnesses, one of whom puts it in writing soon after it is made.

24. “An oral will can always revoke a written will.”

WRONG. In most states, an oral will can never revoke a written one.

25. “A will is the most effective way to leave life insurance proceeds and assets held in qualified retirement plans.”

WRONG. Usually the proceeds of a life insurance policy or the remainder of retirement plans are distributed according to the terms of beneficiary designation forms. If the estate of the owner is designated as beneficiary of the policy or plan, a will may then, in fact, ultimately determine who receives the assets.

26. “Because most people have estates smaller than amounts subject to state and federal taxes, it is a waste of time to consider planning to minimize these taxes.”

WRONG. Even though the amount that can be left to heirs free of federal gift and estate taxes is significant due to recent tax legislation, the total value of your home, savings, and other assets may now be higher than you suspect. Increases in investment values, insurance proceeds, retirement accounts, and inheritances may combine to unexpectedly cause your estate to be subject to federal and/or state estate taxes. Check with your advisors for current amounts that are exempt for taxation.

27. “All property of a married person receives the benefit of the marital deduction.”

WRONG. Only property left directly to a spouse, or for the benefit of a spouse in a properly drafted trust, will qualify for the tax-free transfer.

28. “Nonprofit organizations named as beneficiaries in wills need only be identified by their popular, generally accepted names.”

WRONG. They should be identified by their exact corporate, legal names and addresses. The use of other names can lead to confusion and, in some cases, lengthy and expensive court procedures that may or may not result in the intended charity receiving its legacy.

29. “A personal representative need not be named for a small estate.”

WRONG. A personal representative should always be named. Decisions are sometimes necessary that are best made by someone you know and trust rather than a court-appointed representative who may be unknown to you. You may also wish to waive the posting of a bond, a step that can result in savings, thus making more available for your heirs.

30. “You should not name your husband or wife to administer your estate.”

WRONG. This can be practical when the widow or widower is healthy and willing to serve. Unfortunately, you have no way of knowing now if that will be the case. It may therefore be advisable to name another person or professional administrator as an alternative should one be necessary.

31. “When a will contains a trust, it is best to spell out the terms exactly and narrowly define trustees’ powers.”

WRONG. It is usually best to provide for discretion in some matters. For example, you may wish to grant a trustee broad powers for investment of estate assets so they will have the flexibility to adapt to future changes in economic conditions.

32. “A good will, professionally drafted, rarely needs revision.”

WRONG. Even the best wills can periodically require revision as you experience increases or decreased in wealth, if the needs of loved ones change, or should personal representatives pass away or otherwise be unable to serve. Tax laws can also change over time, as can your charitable preferences.

33. “When you want to care for your surviving spouse and also include charitable gifts, it is usually best to leave everything to your spouse, who can then leave any balance to the organization.”

WRONG. It is sometimes best to set aside amounts you choose for charitable purposes, as your charitable interests may differ from those of your spouse.

34. “The best and most preferred way to be a philanthropist is through your will.”

WRONG. The best way for you to give depends on many personal factors. Giving by will is convenient for many, but other methods should also be explored in order to maximize tax and other benefits.

35. “If you don’t have a will, your estate is unplanned.”

WRONG. It is not necessarily the planning vehicles you choose, it’s the care taken that means the difference between meeting a family’s needs and leaving an estate in disarray. A will often serves as “cornerstone” of an estate plan, but it is possible for other vehicles, such as life insurance, retirement plans, joint ownership, living trusts, and other

means, to handle distribution of a portion or portions of your property.

36. “Most of the important point about wills can be covered in a small booklet like this one.”

WRONG. The laws governing wills in just one state would fill several large volumes. That’s why it’s vital that you consult your attorney as you consider your will and other estate plans.

37. “It is expensive to have an attorney draw up your will and often hard to find out just how much it will cost.”

WRONG. It’s as easy as asking, and attorneys expect to be asked and to quote fees in advance. The fee for their work and advice is often a bargain when measured in terms of the taxes and other expenses a well-drafted will and other plans can save your heirs.

For more information, contact Lisa Evanylo (552-9716) or Bill Baker (552-1727).

Information in this booklet does not constitute legal or tax advice. It is recommended that you consult with your attorney and tax advisor for such advice.

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