

PLANNING FOR THE FUTURE:

WILLS & ADVANCED DIRECTIVES



FLORIDA RURAL LEGAL SERVICES

TABLE OF CONTENTS

WILLS	3
PROBATE	6
LIVING WILLS	7
DESIGNATION OF HEALTHCARE SURROGATE	8

WILLS

WHAT IS A WILL?

A Will is written document that instructs or tells others what to do with your property after you die. Requirements for a valid Will may vary from state to state.

WHAT DOES FLORIDA REQUIRE FOR A WILL TO BE VALID?

- Maker of the Will must be at least 18 years old, and
- Must be of sound mind.
- Will must be written
- Must be signed and witnessed in a special manner as required under Florida law
- Must be filed and proved in a probate court after your death in order to be effective

WHY IS IT A GOOD IDEA TO MAKE A WILL?

It is a lot safer to make a Will than to place all of your property—your home, bank accounts and other items—in joint names with another person. A Will can only be used after you die, and you can always change your Will if you wish to do so.

Joint ownership is not as easily reversed or changed and may, in fact be very risky. A joint owner of your bank account is free to withdraw your money and spend it himself. If you decide to sell your home, a joint owner could refuse to sign-off on the deed and thus refuse to permit the sale to take place. In the long run it is much safer to make a Will leaving these items to a loved one after you are gone. Never turn assets over to another person without talking to your lawyer first.

WHAT WILL HAPPEN IF I DO NOT MAKE A WILL?

If you die without leaving a Will your property will be distributed by the Court according to a rigid formula with no exception for relatives with specific needs or your desires. The Court will appoint someone to handle your estate and the costs will probably be greater than if you leave a Will.

IF I HAVE A WILL CAN I LEAVE MY PROPERTY ANY WAY I WANT?

Almost. If you are married you cannot exclude your husband or wife unless he or she agrees in an ante or post nuptial agreement. If you leave nothing to your husband or wife, he or she can challenge the Will and receive 30% of your estate. There are also restrictions on how you can leave homestead property.

**DO I HAVE TO LEAVE SOMETHING
TO EACH OF MY CHILDREN?**

No. You do not have to leave anything to each or any of your children.

**IF I MAKE A WILL AND THEN CHANGE MY MIND
CAN I CROSS SOMETHING OUT ON THE WILL AND REWRITE IT?**

No. If you do so you may invalidate the entire Will. To change the terms you must either execute an entire new Will or a Codicil- with the same legal formalities as a Will.

FOR HOW LONG IS MY WILL GOOD?

Your Will is good until it is changed, or revoked. Changes in circumstances such as tax laws, deaths, marriage, births, divorce or size of your estate may raise questions as to the adequacy of your Will and should be considered to see if your Will should be changed. If you move to another state you will need to have the Will reviewed.

**WILL IT COST MORE MONEY WHEN
I DIE IF I LEAVE A WILL?**

No. In fact it will probably cost less. If you own any real property individually and do not leave a Will, the court will first determine your heirs. Whether you leave a Will or not does not affect whether or not your estate must be probated.

**MY WIFE AND I OWN EVERYTHING JOINTLY,
SO WHY SHOULD WE HAVE WILLS?**

Owning property jointly may simplify matters when the first owner dies—but what if you die together or within a short period of time? If this happens, joint ownership solves no title problems and the law will determine who gets your property. Also this arrangement may generate more real estate taxes.

**WHAT IF I WRITE A WILL NOW WHILE I AM
A WIDOW AND THEN I MARRY AGAIN NEXT YEAR?**

When you remarry, consult your lawyer about possible changes. Your wishes may not be carried out without proper changes to your will.

**I AM NOW A FLORIDA RESIDENT BUT I HAVE A WILL I EXECUTED
IN NEW YORK. DO I HAVE TO HAVE A NEW WILL?**

You should have the old Will reviewed by a Florida lawyer to see if a new Will is necessary. It may be void.

CAN I WRITE MY OWN WILL?

No. Even if the Will says what you want, it will be void unless it is executed in strict compliance with Florida law. An attorney will make sure the Will is properly signed and witnessed.

WHERE SHOULD I KEEP MY WILLS?

A "Living Will" should be given to you doctor, hospital, or your spouse. A Will should be kept in a conspicuous place so that it can be easily located if anything happens to you.

IF I HAVE A WILL IS THERE ANYTHING ELSE I SHOULD DO TO PREPARE FOR MY DEATH?

Yes. You should leave a list of your loved ones, your assets, your liabilities, etc. to help the survivors handle your affairs. The following is a list of the information we suggest you leave:

1. List of family names with addresses, home and work phone numbers.
2. List of names, addresses, home and work phone numbers of any beneficiaries under your Will.
3. Name, address and phone number of your church or synagogue and minister or rabbi.
4. Name, address and phone number of your lawyer.
5. Name, address and phone number of your employer.
6. If you have any funeral arrangements, leave a description of the arrangements along with names, addresses and phone numbers.
7. Names and addresses of all your banks with a notation of what type of account and the account number. Give the location of any safety deposit box with a brief description of what is in the box.
8. Life insurance information including name and address of the insurance company and the policy number.
9. List of assets including where they are held. For example, if you have a Certificate of Deposit, list the amount of the Certificate, where it is and any appropriate account number.
10. List of bills due every month. For example, if you have a mortgage, put down how much you pay, when, and where you send the payment.

WILL IT COST A LOT OF MONEY FOR ME TO HAVE A WILL MADE?

Probably not. If you want a simple Will with no trusts, and do not have extensive assets you may hire a lawyer to draft a Will for as low as \$50.00.

DO I HAVE TO INCLUDE MY LIFE INSURANCE POLICY IN MY WILL?

Life insurance is a type of asset that does not effect the distribution of property in a Will. Be sure that your choice of a beneficiary is up to date.

IF I DIVORCE MY HUSBAND OR WIFE, DO I HAVE TO CHANGE MY WILL?

It is recommended that you revise your Will every time you experience a major life changing event like death of a spouse, marriage, or divorce.

PROBATE OF YOUR ESTATE

WHAT IS PROBATE?

Probate is a court process used to wind up your personal affairs. It can be used to transfer assets from your name to the individuals that you have named in your Will or who are entitled to receive your assets under Florida law. Probate documents should be filed in the Circuit Court in the county where you resided.

WHAT ARE SOME EXAMPLES OF PROBATE ASSETS?

PROBATE ASSETS	NON PROBATE ASSETS
Bank Account in your name only	Bank Account held in trust for another. Bank Account held jointly with rights of survivorship.
Real Estate titled in your name only	Life insurance policy or individual retirement account policy payable to a specific beneficiary.

WHO SUPERVISES THE ADMINISTRATION OF YOUR PROBATE ESTATE?

Your probate estate will be supervised by a Circuit Court Judge. The Circuit Court Judge will appoint a personal representative over your affairs and issue letters of administration. The letters of administration give the Personal Representative power or authority to act.

WHAT IS A PERSONAL REPRESENTATIVE?

A Personal Representative is an individual appointed by the Court to be in charge of the administration of your estate. The Personal Representative may have authority to do any of the following things:

- Identify, gather, and protect your assets
- Publish Notice to Creditors in a local newspaper
- Serve interested persons with a Notice of Administration regarding the estate
- Pay valid claims, debts, or administrative expenses
- Distribute statutory assets to the surviving spouse or family
- Distribute assets to beneficiaries

WHO CAN SERVE AS A PERSONAL REPRESENTATIVE?

- A bank or trust company under certain restrictions
- An individual who is a resident of Florida
- An individual who is a spouse, sibling, parent, child, or certain other close relative

Note: The Court will give preference to the person designated to serve as a personal representative under a valid Will. If there is no Will, the Court will give preference to the surviving spouse or an individual selected by a majority of the heirs. Non relatives who do not reside in Florida cannot be your Personal Representative.



LIVING WILLS

WHAT IS A LIVING WILL?

A Living Will is a written declaration that directs the provision, the withholding or withdrawal of life prolonging procedures in the event an individual may have a terminal impairment or condition. In Florida, the definition of “life prolonging procedures” has been expanded by the Florida Legislature to include the provision of food and water to patients who are terminally ill.

WHO SHOULD RECEIVE A COPY OF MY LIVING WILL?

When you have executed a valid Living Will, it is recommended that you provide a copy of the Living Will to your physician and hospital to be placed in your medical records. You should also provide a copy of your Living Will to your spouse.

WHEN WILL MY LIVING WILL BECOME EFFECTIVE?

In order for a Living Will to be effective in Florida, it must be signed by you in the presence of two witnesses. Please note that at least one of the witnesses can not be your spouse or relative. If you are physically unable to sign the Living Will, one of the witnesses can sign for you in your presence as long as you are directing the individual to act on your behalf. Florida will recognize a Living Will that has been executed in another state, if that Living Will was signed in compliance with the laws of that state, or in compliance with the laws of Florida.

CAN I REVOKE MY LIVING WILL AT ANY TIME?

Yes. You may revoke your Living Will at any time by executing a written document revoking your Living Will, destroying the original document, or by orally expressing your desire to revoke your Living Will. If you decide to revoke your Living Will, it is highly recommended that you let your spouse, physician or hospital know of your decision.

DESIGNATION OF A HEALTH CARE SURROGATE

WHAT IS A HEALTH CARE SURROGATE?

A Health Care Surrogate is an individual chosen by you to make all health care related decisions in the event of your incapacity. If you become incapacitated, your designated Health Care Surrogate may consult and make decisions regarding your health. The Health Care Surrogate will have authority to give informed consent to your physician and make decisions in your place.

HOW CAN I DESIGNATE AN INDIVIDUAL TO SERVE AS MY HEALTH CARE SURROGATE?

You must designate your Health Care Surrogate through a written declaration. The written declaration must be signed by you in the presence of two witnesses. Please note that at least one of the witnesses can not be your spouse or relative. Most importantly, the individual that you designate as your Health Care Surrogate may not sign the written declaration as a witness.

MAY I DESIGNATE MORE THAN ONE PERSON AS MY HEALTH CARE SURROGATE?

Yes. You may designate an individual to serve as an Alternate Surrogate. If the primary Health Care Surrogate is unable or unwilling to perform his or her duties, the Alternate Surrogate may assume the responsibilities.

DOES MY DESIGNATION OF A HEALTH CARE SURROGATE EXPIRE AT ANY TIME?

No. The Designation of a Health Care Surrogate will not expire. However, you may revoke your designation at any time by executing a written document revoking your designation, destroying the original declaration, or by orally expressing your desire to revoke your Designation of Health Care Surrogate. If you decide to revoke your Designation of Health Care Surrogate, it is highly recommended that you let your physician or hospital know of your decision.

FLORIDA RURAL LEGAL SERVICES, INC.

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