

# Things to Do Before Making a Will

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## Guide G-247

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Preparing a will is one of the things many people put off doing. By some estimates, 50 to 60% of all people in the United States who own property die without leaving a will.

If you have never had a will before, or if your will needs to be revised, there are some general things you should do or think about to prepare for writing or updating your will:

- Make a list of the people to whom you want to leave your property (your beneficiaries). Have their names, addresses, and relationships written down. This list will help you sort out in your own mind what and who you want to include in your will. List all children and grandchildren, even if, for some reason, you do not include them in your will.
- Decide on alternate beneficiaries. This is important for married couples in case they die at the same time or in case your spouse dies before you do. Single people need to consider alternates also.
- Give some thought to the person you will name as the personal representative (formerly called executor or administrator) of your estate. Also choose an alternate personal representative.
- Decide on someone who can and will be the guardian for any minor children.
- Make a written list with names and addresses of all the above (beneficiaries, alternates, personal representative, and guardians).
- Estimate the value of your estate. Your lawyer or tax advisor needs to know this to determine whether tax planning will be necessary. The federal government taxes estates at rates from 37% to 55%. But the only estates that are liable are those that exceed \$675,000 in 2000 and 2001. (You can leave any amount of property to a spouse tax-free.)

Under the Tax Payer Relief Act of 1997, the value of the gross estate will increase incrementally until it reaches \$1 million in 2006.

- Check the beneficiaries named on life insurance policies, annuities, and individual retirement accounts. Are any changes necessary?
- Note if you own property in another state. Include its location and value.
- Check to see if either spouse has separate property. In New Mexico, if a married person dies without a will, community property goes to the spouse. Separate property is divided one-fourth to the spouse and three-fourths to the deceased's children.

There are two kinds of property, real property and personal property. Real property (real estate) is land and fixed and permanent improvements on the land, such as buildings. Personal property is all other property, such as automobiles, checking accounts, stocks, furniture, jewelry, machinery, or tools.

New Mexico is one of eight community property states. Community property is defined as any property acquired during marriage by either spouse, which is not separate property. When a person marries, income such as salaries and items purchased with the salaries become community property or "theirs," regardless of which spouse earns it or who earns the most.

Separate property is property acquired before marriage, by gift or inheritance to one spouse during marriage, by written contract between spouses, or by court order.

Community property laws can be complex. When separate property is co-mingled, it may become impossible to distinguish in the event of a divorce or for estate purposes.

Debts, too, are defined as community debts or separate debts. Most debts acquired during marriage are community debts. Examples of separate debts are those acquired before marriage, those acquired after a

divorce, those that a court declared separate, or debts acquired after marriage but designated to the creditor in writing as separate debts.

- Check to see what property you currently hold in joint tenancy.
- Consider distribution of your estate both in terms of dollars and percentages because its value will change. In most situations, you will designate your property in terms of percentages, but a few designations will be in dollars. For example, \$1,000 to the XYZ charity, two-thirds to one's spouse, and the remainder divided equally among one's children or other designees. Your lawyer or financial advisor can advise you on any specific advantages to each method.
- Decide if there are any specific bequests of special property or money such as "my diamonds to Jane, and my coin collection to Sam." Tangible personal property such as the silver candlesticks, paintings, and grandmother's rocker need not be specified in the will. It can be designated in a written list prepared separately from your will. (The law does not consider money, evidences of indebtedness, documents of titles and securities, and property used in trade or business tangible personal property for this purpose.) Such a list must be referred to in your formal will.
- If you move from one state to another, estate laws will be different than those you may have been familiar with previously. Check to be sure your will is still valid.
- As you make the decisions about your will, keep in mind that a part of your will can be changed without changing the entire will by the addition of a codicil.
- Finally, if you intend to seek assistance in writing your will, make a list of the questions you want to ask so you don't forget them.

## IN SUMMARY

Following are things to keep in mind about wills:

1. One should have a formal individual will.
2. You can write your own will or have an attorney write it for you. If you are writing your own, be sure to use the most up-to-date information and correct procedures.
3. Mutual or joint wills should rarely be considered.
4. One should recheck his or her will for revisions when children are born, after a death in the family, and after divorce.
5. A will should be checked for validity after one moves to another state.
6. Revision should be considered when the value of one's property changes substantially.
7. A will should be checked when new laws may affect the distribution of property.
8. A will may need to be redrafted if an accident or illness renders a member of the family incapable of self-support.
9. A will should be revised or amended by a codicil if a nominated guardian through death or illness can no longer serve.
10. You should substitute a new personal representative if the one named can no longer serve.

## SOURCES

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