

## WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH SPOUSES?

Joint bank accounts and real property held in the names of both husband and wife with rights of survivorship usually pass to the survivor by law and not by the terms of the deceased's Will. If the property is owned as tenants in common, one-half of it will be transferred by Will at the owner's death. There are many cases, however, in which it is not to your advantage to hold property as joint owners.

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## IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual or non-profit organization, the Will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a Will. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, particularly in the area of estate planning.

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## WHO SHOULD DRAFT A WILL?

The drafting and signing of a Will is a delicate operation and must be done in accordance with the requirements of West Virginia law. It requires professional judgment which can only be developed through years of legal training and study of your particular situation. It is a crucial way to protect all that you've worked so hard to earn. Therefore, it is highly recommended that you have an experienced attorney draft your Will.

## MAKING CHOICES MAKES A DIFFERENCE

The West Virginia University Foundation, Inc., was chartered in 1954 as a non-profit corporation devoted to the welfare and future development of West Virginia University and its affiliated organizations.

Governed by an independent Board of Directors, the Foundation exists solely for the purpose of securing and administering private funds in support of academic programs, student scholarships, faculty development, public service initiatives, and other priorities of West Virginia University. Gifts of cash, securities, and other property are given to the WVU Foundation absolutely or in trust by individuals, corporations, and philanthropic foundations solely for the benefit of the University.

Gifts received by the WVU Foundation are used to supplement, but not replace, support from the State of West Virginia.

Over the years, gifts included in wills have benefited many nonprofit organizations in West Virginia. It may be appropriate to consider including a gift provision in your own will to provide benefit for those organizations you feel are most important.

If you are interested in supporting WVU, the proper language for a gift provision in a will is: "to the West Virginia University Foundation for the benefit of (*specify college, other unit or program*)."



**MAKING  
YOUR  
WILL**



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## **MAKING YOUR WILL**

When a person dies without leaving a Will, there is a chance of turmoil and conflict erupting among the deceased's loved ones. The family's grief is often made worse by disagreements among the heirs over the division of the estate. A properly drawn Will should simplify the administration of a deceased person's estate.

Many people avoid making a Will because they are unwilling to face the question of death.

A Will is simply a legal document which sets forth clearly and legally the manner in which you want your property to be distributed following your death.

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## **Q&A**

### **WHO MAY MAKE A WILL?**

The maker of a Will must be at least 18 years old, of sound mind and free from improper influence.

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### **HOW SHOULD A WILL BE MADE?**

The Will should be written, witnessed and signed strictly in accordance with West Virginia law. No beneficiary under the Will or the beneficiary's spouse should act as a witness. It is important to have the testator's and witnesses' signatures attested by a notary public. Handwritten Wills are recognized in West Virginia if certain statutory requirements are strictly fulfilled.

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### **MAY A WILL BE CHANGED?**

People may change their Wills as often as they desire. Changes can be simply and easily made by drafting a new Will or by the addition of an amendment called a "codicil." However, any change or codicil must comply with the same laws that pertain to the making of a Will.

## **HOW LONG IS A WILL VALID?**

A properly drawn and executed Will remains valid until it is changed or revoked. However, changes in circumstances after a Will has been made, such as new tax laws, marriage, divorce, birth of children or grandchildren, or even a substantial change in the nature or amount of a person's estate, can affect the adequacy of the Will or change the manner in which the estate will be distributed.

All changes in circumstances require a careful analysis and reconsideration of all the provisions in a Will and may make it advisable to change the Will to conform to the new situation.

It is a good idea to review your Will at least every four or five years to be sure it is still appropriate.

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## **DOES A WILL INCREASE EXPENSES AT DEATH?**

No. It usually costs less to administer an estate when a person leaves a Will than when the person does not.

A properly drafted Will may reduce the expense of administration in a number of ways. For example: provisions can be placed in Wills which take full advantage of the "marital deduction" allowed under federal tax laws.

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## **HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?**

Everyone who owns any real or personal property should have a Will regardless of the present amount of the estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives, and other factors.

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## **MAY A PERSON DISPOSE OF PROPERTY IN ANY WAY?**

Almost, but not quite. For example, a married person cannot completely exclude a spouse. Also, insurance proceeds, retirement funds, and jointly owned property are examples of assets that usually are controlled independently of a Will.

## **WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?**

When a person dies without a Will, or dies "intestate" as the law calls it, the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a Will, you don't have any say as to how your property will be distributed.

For example, if a person dies without a Will, West Virginia's intestacy statute, like those of other states, first looks to a surviving spouse as recipient. The share to the surviving spouse will be 50%, 60%, or 100% of the deceased person's estate, depending upon whether the decedent and/or the surviving spouse have children by that marriage or a prior marriage. Any portion of the estate not passing to a surviving spouse goes to the decedent's surviving children. If no such descendants exist, the property will pass to the first of the following groups in which living individuals exist: the deceased person's parents, brothers and sisters, nieces and nephews, grandparents, aunts and uncles, or cousins.

Also, no specific gifts to individuals and others, including your favorite charitable organizations, can be made without a Will.

Most importantly, relatives do not automatically receive custody of children who do not have a surviving parent. Your Will should specify the individuals you would like to designate as guardians of your children.

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## **WHO WILL MANAGE YOUR ESTATE?**

If you make a Will, you may name the person you want to manage the administration of your estate. If you do not make a Will, then the Court will appoint someone, whom you may or may not know to handle the affairs of your estate.

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## **DOES A WILL AVOID ESTATE TAXES?**

A properly drafted Will may reduce the amount of taxes that have to be paid. Many Wills written without consideration of recent federal and West Virginia tax laws should be re-examined with reference to tax problems.