Lindstrom Estate & Trust

DISTRIBUTION OF ASSETS
AND
ADMINISTRATION OF YOUR ESTATE

LAST WILL & TESTAMENT (WILL)

What is a Will and what does it do?
A Will is the document which governs the administration of your estate upon death. You need to be 18 years or older to execute a Will and the Will needs to be signed, dated, and witnessed by two individuals over the age of 18. The witnesses should be unrelated to the Testator (person making the Will) and the Will should have all signatures attested to by a Notary Public.

What does "administration of your estate" involve?
Administration of your estate generally involves five areas: 1) asset collection, 2) personal representative appointment, 3) guardian appointment, if applicable, 4) handling tax matters and payment of claims/debts, and 5) asset distribution. First, a Will governs asset distribution by marshaling ("gathering") of your assets and specifying the manner in which any of your debts/obligations are satisfied and then setting forth how all remaining assets are distributed. Second, the Will also names a Personal Representative (sometimes referred to as an "Executor") who is the trusted person that is named to carry out your wishes set forth in the Will. Third, if you have minor children, the Will can, and should, also contain a provision for naming guardians of minor children in the event of a death before the child or children reach age 18. Fourth, the Personal Representative will handle paying debts and resolving final tax matters.

Is there one standard Will?
There are many types of Wills that can be created but all are for the general purposes stated above. Some Wills contain unique and complex tax planning clauses to reduce or eliminate estate taxes and some Wills are what are referred to as "Simple" or "Basic" Wills for situations when tax planning, trust provisions, or other unique circumstances are not present.

Is a Will related to a "Living Will"?
No, a Will is not related to a Living Will. A Living Will is a document used to set forth your desires for specified types of health care in certain events – such as a terminal condition. Due to some confusion with the term "Living Will", it has been replaced by a new form called a Health Care Directive.

What is an example of a typical Will situation?
A typical example of one of the more common types of Wills used is called a Contingent Trust Will. This type of Will is common because it is usually appropriate for the circumstances that often create the mind set of the need for a Will (i.e. a young couple has young children and realize they have not done any estate planning and wonder - now what?).

A Contingent Trust Will is a Will that contains provisions, called Trust provisions, that specify that assets can be held in trust until the beneficiaries reach certain designated ages. It is a "Contingent" Trust Will because the trust does not always come into existence. The Trust is only established if you and your spouses' deaths both occur prior to your children reaching the designated ages. For example, a couple with minor children may have a Contingent Trust Will that provides that all assets will pass to the surviving spouse and then upon the second spouse's death the assets will be divided equally amongst the couple's children.

The Trust provisions may additionally provide that instead of assets passing outright to their child or children at the age of 18, that the assets would be held in trust. Often times parents feel, and understandably so, that their children would not have the financial knowledge to properly deal with an

outright distribution at age 18. Therefore, the Trust could provide, for example, that a portion of the assets would be distributed at age 25, a portion at 30, and the remainder at age 35. However, virtually any circumstances may be inserted. The Trustee (the individual who is assigned to handle the Trust assets) is generally given the authority to provide for the children's health, education, support, and maintenance prior to the ages of distribution. More often than not, one or both of the parents are living at the time of the latest age of distribution and the Trust does not come into existence. After that point, assets would simply pass outright to the children.

There are some certain remote situations that need to be addressed in a Will. For example, one situation is where a child predeceases the parent. In such an event, usually the Testator would want their assets (or such predeceased child's share) to pass to such child's children (the Testator's grandchildren), if any. Another situation is if there are no surviving children or grandchildren; the Will should also cover such circumstance. Generally if there is no surviving spouse, children, or grandchildren, a Testator would leave their assets to their next closest relatives (usually parents or siblings) but anyone can be listed as a beneficiary including charitable organizations. Other than a spouse, there is no obligation to name any particular person as a beneficiary. However, there are statutes which preclude excluding a spouse from a Will without a consent or a valid pre or post-nuptial agreement.

Does having a Will prevent my estate from going through Probate?

The short answer is no. In fact, your Will is the document that governs how your assets are administered within a Probate proceeding (subject to limitations for small estates). However, your Will and the Probate process only governs assets that are in your sole name without a joint owner, named beneficiary (i.e. life insurance and retirement plans), or payable/transfer on death (POD/TOD) designations. Thus, often on the death of the first spouse there is not a probate proceeding because most assets are held jointly by both spouses or the spouse is a designated beneficiary. Non-married individuals or surviving spouses often have assets that are held in their sole name and thus a probate proceeding will generally be required.

Probate Misconceptions

There are many misconceptions about the Probate process. A common misconception is that a probate is an extremely expensive and time consuming process (1 or 2 years). More often than not, an Informal Probate proceeding can be used for many individuals which makes the process relatively straightforward. Nevertheless, a probate will cost $5,000 at a minimum.

A second misconception is that everyone needs a Trust to avoid probate and the expenses of probate. If an Informal Probate proceeding is used, the expense of the Probate proceeding can equal the cost of creating a Trust and titling all of your assets in the name of the Trust. Moreover, much of the expense involved with handling an estate relates to matters unrelated to the Probate process such as collecting assets, paying creditors, and handling tax returns. However, a Probate process is generally a longer duration and less efficient process than administering a Trust.

A third misconception is that in probate your assets may end up passing to the State of Minnesota. This is virtually a myth. Only if you did not have a Will/Trust and did not have any surviving relatives (including extended relatives) would your assets ever go to the State - unless, of course, you name the State as a beneficiary.

Intestacy or Intestate (This refers to someone who does not have a Will)

If you pass away without a Will, you are said to die "Intestate". If you pass away without a Will, there are Statutes or laws which address the distribution of your estate referred to as "Statutes of Intestate Succession." These Statutes attempt to make an educated guess at what your wishes would have been if you had a Will. Thus, no worries? Not so fast, the Intestacy statutes are as stated, an educated guess as to your wishes and typically do not match your actual desires. Furthermore, the Statutes provide who your Personal Representative (Executor) will be, do not allow for holding your assets in Trust for your young children, and do not allow you to determine who the guardian(s) of your minor children will be. Moreover, the Intestacy Statutes do not address your estate-tax planning needs and may have your assets passing to those whom you would not desire to be your beneficiaries. In short, make a Will and reduce the burden on your family and loved ones in that, without a Will, the Statutes of Intestate Succession will control your affairs despite your loved ones knowing that you would have had other wishes.