

Understanding the Last Will and Testament

by Gary Villnow

What is a Last Will and Testament?

The Last Will and Testament is a document drafted by an individual, referred to as a Testator, which directs the passage of his or her assets after the Testator's death. A Last Will and Testament will direct the appointment of a personal representative of the Testator's estate. A personal representative is the person who will administer the estate by paying any debts of the Testator and making the distributions as the Testator directed in his or her Last Will and Testament. Other important persons that may be appointed in a Last Will and Testament are guardians for minor children, and trustees who will manage assets for minor children. There are specific language and witnessing requirements for a Last Will and Testament. A Last Will and Testament is revocable and amendable and does not restrict the ability of the Testator, during his or her life, to sell, give away, or borrow against any assets owned by the Testator.

Does the execution of a Last Will and Testament avoid probate?

It is a fairly common misconception that the drafting and execution of a Last Will and Testament will allow the Testator's estate to avoid probate. Executing a Last Will and Testament will not allow the Testator's estate to avoid probate. If the Testator leaves more than \$50,000 in assets to pass on to heirs, some form of probate involving the court will have to be undertaken.

What happens if I die without executing a Last Will and Testament?

If a person dies without executing a Last Will and Testament to convey their wishes, and the person leaves more than \$50,000 in assets to pass on to heirs, then state statutes direct the distribution of the estate. These state statutes are referred to as the rules of intestate succession. These rules provide for the distribution of the Testator's estate according to how closely the heirs are related to the Testator. Additionally, if a person dies without executing a Last Will and Testament, there is no clear direction as to who the Testator wants to act as the guardian of the Testator's minor children or who the Testator wants to manage assets for minors who will be inheriting from the Testator's estate.

Why is a Last Will and Testament Important?

Without a Last Will and Testament, there is no clear direction as to how the person who dies wants his or her estate to be distributed, who will be the guardians of the Testator's minor children, or who will manage assets for minor beneficiaries. Under some circumstances, a Will may also contain provisions that will allow for the elimination or reduction of estate taxes.

Gary Villnow is an attorney in Amherst and a member of the National Academy of Elder Law Attorneys. He received his Doctor of Jurisprudence degree from Drake University Law School in Des Moines, Iowa.

***Copyright 2009, Gary R. Villnow, III. All Rights Reserved Worldwide in all Media.
Please contact the author regarding reprint permission at PO Box 187, Amherst, WI
54406; (715) 824-3311; gary@villnowlaw.com.***

March 1, 2009