

Before Making A Will

Preparing a Will is something 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 and 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) along with their names, addresses, and relationships. This list will help you sort out in your own mind what and whom 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 also need to consider alternates.
- Give some thought to the person you will name as the personal representative (formerly called executor or administrator) of your estate, and 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, addresses, and telephone numbers 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. Federal government estate taxes can be as high as 55% after 2012. Presently in 2011 and 2012, the only estates liable are those that exceed \$5 million. (You can leave any amount of property to a spouse tax-free.) Under the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, the value of the gross estate will return to \$1 million in 2013.
- 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, and include its location and value.

- For married couples, 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.

Property and Debts

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 that is not separate property. When a person marries, income such as salaries and items purchased with the salaries becomes 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.

Similarly, debts 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 and your spouse currently hold in joint tenancy.

Distribution of Your Estate

- 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

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percentages, but a few designations will be in dollars. For example, you may designate \$1,000 to the XYZ charity, two-thirds to your spouse, and the remainder divided equally among your 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 (designation of personal property) 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; such property can be designated in a written list prepared separately from your Will. (For this purpose, the law does not consider as tangible personal property money, evidences of indebtedness, documents of titles and securities, and property used in trade or business.) Such a list must be referred to in your Will. For more information, see NMSU Cooperative Extension Service Guide G-246, *Information To Help Your Heirs*.

Keeping Your Will Up to Date

- 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 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

The following are things to keep in mind about Wills.

1. You 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. A Will made in New Mexico or for a New Mexican without the requirements of New Mexico law is invalid!
3. Mutual or joint Wills should rarely be considered.
4. You should recheck your 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 you move to another state.
6. Revision should be considered when the value of your 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 can no longer serve because of death or illness.
10. You should substitute a new personal representative if the one named can no longer serve.

References

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