

Why Shouldn't I Do My Own Estate Planning?

Estate planning involves judgment and skills acquired only through professional training and experience. Standardized Wills and trusts, such as those produced using kits or computer software may not be drafted to comply with Pennsylvania laws. A Will or trust that is not properly drafted could result in your estate being distributed in a manner contrary to your wishes. Your family also may incur unnecessary legal costs should the Will or trust be challenged.

Remember ...

The only way to be certain that your specific needs and desires in estate planning are being met is by consulting a knowledgeable lawyer or a lawyer referred to you by a trusted source. High-pressure sales by mail or in person and do-it-yourself kits should be viewed with skepticism. If you do not have an attorney and want to find one in your area who can assist you with your estate planning, contact your local bar association or the Pennsylvania Bar Association's Lawyer Referral Service at 800-692-7375.

How Can I Locate an Attorney?

Call the Pennsylvania Bar Association Lawyer Referral Service toll free at 800-692-7375. Many counties have this same service at the local level. Look in your Yellow Pages under "attorneys" for more details.

This pamphlet has been made available to you as a public service of the Pennsylvania Bar Association.

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Estate Planning

Consumer Legal Information



Pamphlets

by the

PENNSYLVANIA BAR ASSOCIATION

WILLS

Why Do I Need a Will?

A Will is a legal document that helps you put your affairs in order when you die. Every adult should have a Will to outline his or her intentions regarding home, finances and other assets and possessions upon death. Your Will should identify who will handle your estate, how your assets will be divided and who will serve as guardian for your minor children. If you die without a Will, your money and possessions will be distributed according to a formula fixed by law, which means that your spouse may have to share assets with other family members not of your choosing. It also could create lengthy delays in the final distribution of assets. Additionally, dying without a Will could result in your minor children being placed in the care of a court-appointed guardian rather than with people you would have chosen to care for them.

What If I Change My Mind About the Contents of My Will?

In Pennsylvania, a Will is not filed (or probated) until after a person dies. As a result, you can change or update your Will at any time throughout your life, as circumstances require.

Isn't It Expensive to Have a Will Prepared?

There is no set price attached to the preparation of a Will. The fee to prepare a Will that addresses your specific needs will depend upon the complexity of your situation and intentions. Most lawyers offer an initial consultation through which they are able to review your needs and then estimate the cost for your Will.

Special Note: This pamphlet has been issued to inform and not to advise. It is based on Pennsylvania law. The statements are general, and individual facts in a given case may alter their application or involve other laws not referred to here.

PROBATE

What Is Probate?

The probate or estate administration process is when someone dies owning assets in his or her name alone and an estate must be started by a personal representative to handle the decedent's assets and settle his or her affairs. The personal representative is called an Executor if appointed in the decedent's Will. If the decedent has not designated an Executor in a Will, the court appoints an "Administrator," which can be an individual or corporation such as a bank or trust company. The Executor or Administrator is the only person or entity legally authorized to deal with the assets of the estate and handle matters of estate administration.

Why Is There a Probate Process?

Probate is a process required by state law. The probate process in Pennsylvania is an efficient way to protect beneficiaries and creditors and to assure proper distribution of estate assets. Assets held in a trust are governed by the terms of the trust rather than the decedent's Will and pass outside the probate process. But ... even if assets are not subject to probate, they may still be subject to all of the same death taxes as probate assets.

What Are the Costs of Probate?

In Pennsylvania, the costs of probate include filing fees for opening the estate, advertising the estate, filing an inventory of estate assets and other papers to complete the administration process. Legal fees are paid to the attorney handling the estate work, which may include preparation of various death and income tax returns. Obtaining appropriate legal advice about the administration of the estate can help contain costs and taxes. Talk to your lawyer to find out whether services will be based on an hourly fee, a flat rate or on a percentage of the estate assets, and what would work best for you.

Is Probate a Lengthy Process?

In Pennsylvania, probate need not and normally does not take long in comparison with other states. Executors or Administrators are accorded broad powers to accomplish the administration of estates in a quick manner. They are empowered to handle most details without seeking court approval for each and every transaction, such as the liquidation of assets and the paying of debts and expenses.

TRUSTS

What Is a Trust?

A trust is a legal entity to which your assets (bank accounts, securities, house, etc.) can be transferred for management by a trustee. Trusts can be created while you are living to manage your assets while you are alive or to help your heirs manage their inheritance after your death. There are a number of types of trusts, each with its own set of benefits. As such, trusts can be complicated, so it is important that you contact a lawyer to make sure that you understand all of the issues about trusts.

One form of trust that has been aggressively marketed by some financial planners and lawyers is a "Living Trust." Be aware that although a "Living Trust" could be right for you, you should review any trust with a lawyer experienced in estate planning before making a commitment. Trusts can ensure flexibility in your asset management and may have tax benefits, but you should be sure that you really need one and that it fits your needs.

What Are the Common Myths About "Living Trusts?"

"If I have a 'Living Trust' ...

- *I do not need a Will.* **False** — Even if a "Living Trust" is right for you, you still should have a Will. If some of your property is left out of the trust, or if any portion of the trust is invalid, a Will can ensure your assets are transferred consistent with your wishes.

- *My estate will not pay attorney's fees.* **False** — Because transferring assets under a "Living Trust" will require accumulating assets and distributing them (and since taxes may be due), it is usually necessary to hire a lawyer to help administer the "Living Trust" after death. In addition, there are legal fees associated with preparing the trust document.
- *The assets will not be considered mine if I need to go to a nursing home.* **False** — Because "Living Trusts" usually are revocable (meaning you can alter them during your lifetime), they will be considered your assets if you apply for nursing home benefits.
- *My estate will not pay inheritance or estate taxes since my estate won't need to "go through probate."* **False** — Generally speaking, any transfer of assets as a result of death will result in inheritance and possibly estate taxes being due. Thus, in most cases, property passing by a "Living Trust" will be subject to tax. Certain trusts, referred to as irrevocable trusts, may have tax advantages that other trusts can't provide.
- *My assets automatically will be part of it and my Will will not have to be probated.* **False** — Only property that you specifically list as part of the trust will be part of it. If you own property individually and don't include it in the trust, your Will still must be probated.

Unfortunately, some "Living Trusts" are marketed to senior citizens through high-pressure sales pitches that prey on the fear that assets will be tied up indefinitely or that estates are prone to heavy taxes and fees if a "Living Trust" is not in place. These marketing schemes try to convince consumers that a "Living Trust" is right for them even though many of the complex rules and fees that can complicate estate distribution do not exist in Pennsylvania. Victims can be sold self-help "kits," costing several thousand dollars that are nothing more than standard forms that may not be valid under state law.