



Last Will and Testament

Generally

A Last Will and Testament is the document that dictates the transfer of a person's property after they pass away. Importantly, a Will does not control the transfer of non-probate assets, unless, for example, the estate is named as a beneficiary. Examples of non-probate assets include the following types of bank accounts: (a) joint tenants with rights of survivorship (JTWROS); and (b) pay-on-death (POD) or transfer-on-death (TOD). Insurance policies and retirement accounts can also be non-probate assets.

The person signing the Will must carefully review their assets to confirm which assets will be treated as non-probate assets and whether changes need to be made to have those assets pass pursuant to the terms of the Will.

Beneficiaries

Identification of beneficiaries to be named in a Will is essential to ensure all probate assets are transferred upon death. Probate assets can be given to a group of people, individuals or charities and can be given in trust or outright to the named beneficiary.

If a beneficiary is a minor, incapacitated, or otherwise incapable of managing assets, a trust may be appropriate.

Independent Executor, Trustee and Guardian

An Independent Executor must be named in every Will. The Independent Executor files the Will for probate and administers the estate in accordance with the terms of the Will.

If a Will creates a trust, the Will should also name a Trustee to manage and distribute the assets to the trust beneficiaries.

A Guardian of the Person and Estate should be named for any minor child.



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