

WHAT IS A LAST WILL AND TESTAMENT?

A Last Will and Testament (Will) is a document which provides the manner in which a person's property will be distributed after death. It must meet certain formal requirements as provided by the laws of each state. Most states will accept a Will that was executed in another state as long as it is a valid Will under the laws of the state in which it was drafted.

WHAT MAKES A WILL VALID?

In Alaska, the maker of the Will (the "testator" or "testatrix") must be 18 years of age or older. The testator must also be of sound mind (see Alaska statute section 13.12.501) meaning someone who has not been deemed incompetent in a prior legal proceeding. Coercion placed on the testator may invalidate a portion of, or the entire, Will under a "sound mind" principle. In addition to the age and mental soundness requirement there are some additional general criteria for executing a valid Will which include:

1. document must be written (typed or printed)
2. there should be a statement that indicates any previous Will is nullified
3. all provisions in the Will must be legal and conform to public policy
4. must be signed by the person making the Will ("testator" or "testatrix")
5. must be signed by two witnesses present at the execution of the document by the author and who witnessed all signatures on the document (see Alaska statute Title 13 Estates, Guardianships, Transfers, Trusts; Chapter 12 Intestacy, Wills, and Donative Transfers, Sections 13.12.501 through 13.12.505).

The witnesses to a Will must be generally competent. It is also recommended the witnesses to the Will be disinterested, meaning they are not beneficiaries of the Will. While it is advisable to avoid conflicts by having two disinterested witnesses, an Alaska court will not invalidate a Will simply because a witness is also a beneficiary (see Alaska statute section 13.12.505). To expedite the probate process, it is advisable to have the Will be self-proven. Witnesses to a self-proven Will are not required to testify in court because the court automatically accepts a self-proven Will as authentic. To self-prove a Will, the testator and witnesses must affirm to the authenticity of the Will in an affidavit before a notary. The testator should then attach the notarized affidavit to the original copy of the Will (see section Alaska statute 13.12.504). In Alaska statute there is an exception to the witness rules if the Will is a Holographic Will. A document is a valid Holographic Will if the signature and material portions of the document are in the testator's handwriting. This is in contrast to a Will that is typed (see Alaska statute section 13.12.502(b)).

WHEN SHOULD YOU MAKE A WILL?

A Will should be made while the testator is in good health and free from emotional stress. A prudent person does not wait for a catastrophe or other compelling reason before making a decision. To exercise the most control over your estate, a Will should be established. If a person dies without a Will they are said to have died "intestate" and state laws determine how and to whom the person's assets are distributed. This includes

guardianship of minor children. The true value of having a Will cannot be understated.

When a person dies without a Will, beneficiaries cannot dispute the court's distribution of an estate under the intestacy laws. Even if the decedent verbally expressed different wishes during their lifetime, state statutes control distributions. For individuals who are charitably minded and wish to involve a charitable component (such as Christian ministry causes) in their estate plan, it is important to remember there is no provision for charitable giving in Alaska intestacy laws.

MAY A WILL BE CHANGED?

A person may change a Will as often as he or she desires. Changes are made by either executing a new Will, which revokes or replaces a prior Will, or by executing a legal addition or amendment called a "codicil." When a codicil to a Will is made, just as when the original Will was created, certain legal and statutory requirements must be met for the document to be effective. If you wish to change your Will, you should always consult legal counsel in advance.

HOW LONG IS A WILL EFFECTIVE?

A properly drawn and executed Will is effective until it is changed or revoked. Changes in circumstances after a Will has been made, such as tax laws, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, may raise questions as to the adequacy of that Will. All changes in circumstances require a careful analysis and reconsideration of all the provisions of a Will and may make it advisable to change the Will to conform to the new situation.

WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?

According to Alaska intestate law, a surviving spouse will inherit the entire estate only if the decedent's parents are deceased and he has no children, or if the children are also the surviving spouse's children, (see Alaska statute 13.12.102(a) (1) (A) and (B)). If the decedent's parents are still alive, they will inherit the balance of the estate after the surviving spouse receives \$200,000 and three-quarters of the estate (Alaska statute (a) (2) of 13.12.102). (a)(4) limits the spouse's inheritance to \$100,000 and half of the balance of the estate if the decedent has any children who are not also the spouse's. All the children, regardless of parentage, will then share the remainder equally. If there is no surviving spouse, Alaska statute 13.12.103(1) states that the decedent's children will inherit equal shares of the entire estate. The decedent's parents are the next to inherit if there are no children. If the parents predeceased the decedent, subsection (4) allows the decedent's siblings to inherit. When there are no heirs, Alaska statute 13.12.105 sets forth the state's right to receive the estate.

WHO WILL MANAGE YOUR ESTATE?

If you make a Will, you may name the person whom you want to manage your estate during the period of administration. This person is called the executor (personal representative in Alaska). If you do not have a Will, the Probate Court will appoint someone, whom you may or may not know, to handle the affairs of your estate.

DOES A WILL AVOID INHERITANCE TAXES AND OTHER DEATH TAXES?

A properly drafted Will can reduce or eliminate certain costs associated with probate. For example, in the Will, you can eliminate the need for the personal representative to be bonded. This is not the case if the probate court appoints someone, thus increasing the cost of probate procedure. While the Will does not eliminate inheritance and/or estate tax, it is important for everyone to keep these issues in mind as they are affected by a variety of factors including which state an individual resides in at time of death, as well as the overall size of a person's estate. Alaska currently has no inheritance or state estate tax. Currently the federal estate tax rate offers an exemption for the first \$5 million (up to \$10 million for a married couple if properly handled) and taxes any excess at a 40% flat rate. Consult an attorney for specifics. Under the current law there is an unlimited dollar amount exemption for property transferred to a spouse; this really just delays estate taxes since, once the spouse passes away, whatever remains in the estate is subject to tax. At this writing, there is a dollar-for-dollar exemption from estate tax for amounts given to charitable causes. There is certain language used in drafting a Will in addition to other estate planning instruments which may be used to help minimize tax. It is always advisable to consult knowledgeable legal counsel when drafting any form of estate documents such as Wills or Trust.

DOES A WILL CONTROL HOW ALL OF MY ESTATE IS DISTRIBUTED?

Property is transferred in three basic ways which include:

1. **Operation of law** includes things like jointly-owned property with right of survivorship, such as a joint checking account.
2. **Contract** examples include Individual Retirement Account (IRA), designations, life insurance contracts, and trust with testamentary provisions.
3. **Will** includes remaining items that do not otherwise transfer ownership by operation of law or contract.

It is important to understand how property ownership is transferred because even if property is designated a certain way in the Will, that designation is overridden by the operation of law, such as a joint account with right of survivorship, or the contractual agreements such as IRAs. It is important to assess all property to make sure it is designated in a way consistent with your desires. For example, if you want a certain beneficiary to receive money which would be provided from a life insurance policy or retirement account, that person should be designated as the primary beneficiary in the contract documents.

IS THERE A SUBSTITUTE FOR A WILL?

There are ways to transfer property outside of probate and one common method is a Revocable Living Trust. This is a type of legal instrument in which properties can be transferred while still remaining under the control of the individual who established the Trust. The primary benefit is that anything held in the Trust is considered the property of the Trust and therefore excluded from the public record of probate. The disadvantage is that it is generally more complex than a Will and thus is more expensive to generate. Also, care must be given to how property is handled as

it is no longer technically the property of the individual but the property of the Trust. Many experts still recommend having a catchall Will that makes mention of the Trust as well as handling any properties that may have not been transferred to the Trust. Most individuals are comfortable with having only a Will, especially if their estates are relatively small or basic, with many of the assets passing by operation of law or contract.

MAY A PERSON DISPOSE OF PROPERTY IN ANY WAY DESIRED BY MAKING A WILL?

A person may distribute most property as they choose by drafting a Will however, there are exceptions. As an example, if a wife has been disinherited, she may still be entitled to seek her “elective share.” In Alaska, the elective share is one-third of the estate after funeral expenses, homestead allowance, exempt property, decedent’s outstanding debt and administrative costs. Consult an attorney for specifics.

DOES A WILL INCREASE PROBATE EXPENSES?

Having a Will eliminates the need for the personal representative to be bonded or provide a formal accounting of the estate inventory. When there is no Will, the probate court must appoint someone to act as representative and generally will follow all of the nuances that could otherwise be excused by declaration of the Will. Thus, the administrative cost of distributing an estate is far greater without a Will than with one.

HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

Any amount of property constitutes an estate. If you own a home or are buying one, you have an estate. Personal and family circumstances are large factors in determining whether your estate warrants the making of a Will.

DO I NEED A LAWYER TO DRAFT A WILL?

You can make your own Will in Alaska. However, drafting one can be a delicate operation requiring professional knowledge. If an estate is very straightforward with no possibility of complication, a testator may decide not to employ the services of legal counsel for drafting a Will. Nonetheless, consulting a lawyer is always recommended. A Will may be contested or you may wish to disinherit a relative for some reason. Only a practicing lawyer can help you avoid the numerous pitfalls and advise the course best suited for your individual situation.

IS A WILL EXPENSIVE?

A lawyer charges according to the time spent in preparing a Will. A few hours of an attorney’s time may mean great savings in taxes and probate expenses. Usually the cost of the surety bond, which may be waived by a Will, exceeds the lawyer’s charge for preparing a Will. Most lawyers will discuss their fees in advance.

NOTE: This brochure is based on an original brochure provided by the Alabama State Bar with some rewording of questions to provide a broader response and has been modified to conform to Alaska law. This brochure is issued to inform, not to advise, is not intended to apply to any specific problem and should not be used as a substitute for sound legal counsel. The information provided is general in nature and meant to apply to the broadest audience possible within the state of Alaska.

http://www.alabar.org/brochures/last_will.pdf

Alabama State Bar
415 Dexter Avenue
Montgomery, Alabama 36104
(334) 269-1515
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<http://resources.lawinfo.com/en/articles/wills-estate-planning/alaska/basic-requirements-for-a-last-will-and-testam.html>

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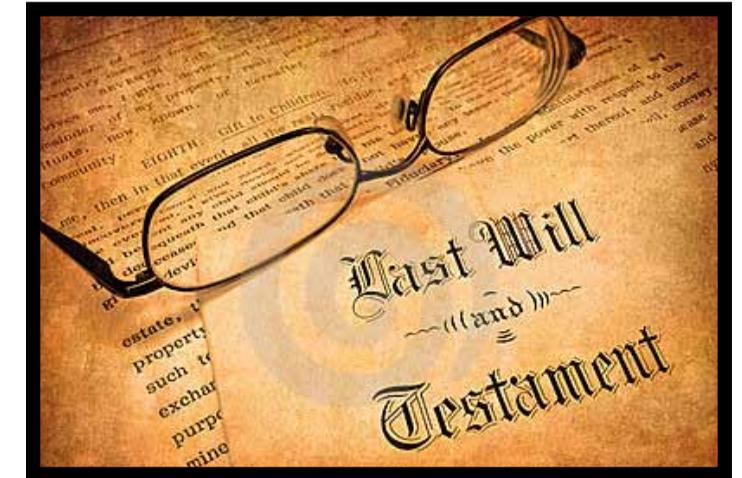
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A Practical Guide to Estate Planning from a Christian Perspective first edition 2010, Kingdom Stewardship Alliance, a ministry of The Baptist Foundation Alabama by Barry Bledsoe

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ANCHORAGE, AK 99507
907-770-0581