

THIS DOCUMENT, WHICH IS BASED ON GEORGIA LAW, IS INTENDED TO INFORM NOT

TO ADVISE. NO ONE SHOULD ATTEMPT TO APPLY OR INTERPRET ANY LAW

WITHOUT THE AID OF A LAWYER WHO KNOWS CRIMINAL LAW AND COURT RULES,

BECAUSE THE FACTS OF EACH INDIVIDUAL CASE ARE DIFFERENT AND MAY CHANGE

THE APPLICATION OF THE LAW.

WILLS – EXPLAINED

Do You Have A Will?

A will is a document controlling the disposition of property at death. It may be revoked, changed or added to at any time before death provided changes are made strictly in accordance with the requirements set by law. A will's terms cannot be changed by writing in or crossing something out after the will is signed and witnessed. The laws of each state set the formal requirements for a legal will.

In Georgia in general:

1. You, the maker of the will (called the testator), must be at least 18 years old.
2. You must be of sound mind at the time you sign your will.
3. The will must be in writing and signed by you.
4. Your will must be witnessed by two or more witnesses in the special manner provided by Georgia law. These rules have been developed over hundreds of years for the protection of you and your beneficiaries and must be observed carefully.

Should I Have A Will?

You should have a will if you have a bank account, stocks, bonds, other personal property, real estate, insurance payable to your estate, pension plan benefits payable to you, or a prospect of inheriting or acquiring more property, or a good change to have any one of these by the time you die. You also should have a will if you are married or have remarried, or if you have children, especially minor children.

What If I Die Without A Will?

If you die without a will, your individually-owned property will be distributed to designated relatives according to a formula fixed by Georgia law.

For example, if you die without a will and leave a spouse and a child, your estate will first pay or set aside administration, funeral and last illness expenses, debts, taxes, exempt property, a family allowance and a homestead allowance. Your spouse will receive a child's share. Your child will receive the balance. If your child is a minor (under age 18), the child's share will be held for the child by a court-appointed and bonded guardian. If you die without a child, your spouse will receive everything.

Other distributions could occur depending upon the composition of your family at your death.

May I Dispose Of My Property In Any Way I Wish By Will?

Georgia law permits you to dispose of your property as you desire, but public policy sets some limits. For example, a married person may not exclude his or her spouse because the surviving spouse has the right to elect to take a certain portion of the estate despite the will. If your will does not name your child or indicate that he or she has been considered, that child may have certain rights. Your lawyer can explain other restrictions on how you may dispose of your property.

What Are The Advantages Of A Will?

*You may choose the personal representative (formerly "executor") you wish to handle your estate.

*The expense of bond premiums, as well as some probate costs, may be avoided. For example, you may direct that your estate be administered independently of the court and that no bond be required.

*You decide who gets your property instead of having the law decide for you. You may wish to provide a larger share for a young or sick child, leave something to charity, or give all your property to your spouse. You may take into consideration previous gifts that you have made, or other property passing outside your will, such as insurance, employee benefit plans, and joint property.

*A trust may be created in your will to keep your property intact for the benefit of your family.

*Minors can be provided for without the expense of guardian and bond proceedings.

*You may avoid the forced sale of your business.

*You can save estate taxes by taking advantage of certain provisions of the federal tax laws in your will.

*Your will can place the estate tax burden on the right parties for property passing under your will and outside your will.

*Your will is the final document which completes your lifetime of planning for your family.

How Long Is My Will Good?

Your will is good until it is changed or revoked in the manner required by law. It may be changed as often as you desire. The later birth or adoption of a child who was not provided for in the will (or intentionally omitted) may have the legal effect of substantially changing the provisions of your will. Divorce revokes provisions for the former spouse. You should revise your will whenever changes in the size or circumstance of your family or estate mean that your old will no longer fits your requirements.

Your will should be up-to-date and conform with changes in tax and probate laws. For this reason, it is very important to review your will periodically with your lawyer.

New Georgia Residents

A will executed in another state is valid in Georgia. However, if you have recently moved to Georgia, you should have your will reviewed to determine if it will effectively carry out your wishes under Georgia law.

Is Joint Ownership A Substitute For A Will?

Jointly owned property does not pass under a will, and joint ownership always involves a gamble as to who dies first. While you may change your will from time to time, joint ownership is fixed and rigid. It may involve gift and estate tax complications which were not anticipated when it was created.

In Georgia, the usual joint ownership by husband and wife is called a tenancy in common. Joint ownership may be useful as a legal device in addition to a will. It should not, however, be used indiscriminately and should only be adopted after consultation with your lawyer.

Does Life Insurance Take The Place of My Will?

Life insurance is simply one kind of property you may own and does not take the place of a will. In general, if your life insurance policy is payable to an individual, your will has no effect on the proceeds. However, if your policy is payable to your estate, your will governs the disposition of the proceeds. Have your lawyer and your life insurance program which will form, with ;your will, a sound estate plan.

Who Should Draft My Will?

The drafting of a will involved decisions requiring professional skill

and judgment which can only be obtained through years of training, study and experience. Only the skilled practicing lawyer can properly advise the course best suited for your individual situation.

Does Each Spouse Need A Will?

In practically any case where one spouse needs a will the other should also have one. For example, if one spouse has no property, he or she will need a will in order to provide for the property that would be acquired upon the death of the other spouse. Certainly if property is held jointly, wills for both husband and wife should be considered.

When Should My Will Be Written?

Everyone should have a will. There are no advantages in delay, but there are serious risks in dying without a will.