Helping Older Persons With Legal & Long-Term Care Problems

Everything You Need To Ask And Know About Wills

1. What is a will?

A will is a formal document that lets you provide for the distribution of your estate when you die. An estate consists of real property (e.g. land), personal property (e.g. stocks, bank accounts, cars) and intangible property (e.g., claims, interests, rights) that you own at death.

2. What if I die without a will?

You are said to have died "intestate" and, with certain exceptions, your assets are distributed according to Ohio law. The Ohio intestate law is complex. For example, depending on the nature of your family, your estate may be distributed entirely to your spouse or may be divided among your spouse and surviving children. If you want to distribute your estate in amounts or to beneficiaries contrary to the Ohio intestacy statute, you must have a will that states you wishes.

3. Why do I need a will?

You need a will if you want to (a) make a specific bequest of real or personal property; (b) make special provisions for certain property or individuals; (c) name your executor (the person who will carry out your will); (d) provide for charities or individuals outside your immediate family; (e) name a guardian for minor children; (f) disinherit someone;(g) leave an entire estate to a spouse who would receive only a portion of the estate under Ohio law.

4. Who can make a will?

Ohio law permits anyone 18 or older, with sound mind and memory and not under restraint, to make a will. The person making the will is called the "testator." "Sound mind and memory" means you understand: (a) the act of making a will; (b) the general extent of your property; (c) your relationship with your family; and (d) to whom you are giving property through the will. "Not under restraint" means you were not defrauded or unduly influenced when you made your will.

5. What must I do to make a will?

Your will must be in writing. It may be handwritten or typed. You must date and sign the will on the last page in front of two competent witnesses, who see you sign the will and hear you acknowledge that the will is yours. The witnesses must be at least 18 years of age. The witnesses must sign the will and they can also testify that you were of sound mind and memory and not under restraint. Another person may sign the will for you if you specifically direct the person to do so, and the person signs in your and the witnesses' presence.

6. Where should I keep my will?

Keep the original in a safe place where it may be found easily after your death. Leave a copy with the attorney who wrote it for you. Tell your executor where a copy can be found or give a copy to the executor. For wills left in a safe deposit box, the tax commissioner no longer requires an inventory and tax release before a safe deposit box may be opened.

7. What kind of property can be distributed by a will?

Generally, any land or personal property owned by you at the time of your death can be distributed to beneficiaries by your will. Exceptions are (a) property interests that terminate at death (e.g. life estates); (b) bank accounts or land held jointly with the right of survivorship. (c) insurance death benefits made payable to specific beneficiaries; (d) payable on death bank accounts; and (e) transfer on death deeds.

8. Must the executor of an Ohio testator be an Ohio resident?

Not always. An out-of-state executor is allowed if the executor is related by blood or marriage or if the state in which the out of state executor resides permits a non-resident, non-relative to serve as an executor.

9. Can I disinherit my spouse or children?

If your spouse is omitted from or disagrees with the will, she or he can instead choose to take that part of the estate she or he would have received if you had died without a will. The spouse must do this within 5 months from the initial appointment of the estate administrator or executor. A child, however, can be disinherited, but you should state this intention in your will.

10. Do my beneficiaries have any rights before my death?

No. A will does not take effect until your death. You can change or revoke the will at any time before your death. When you revoke a will, it means that the will has been canceled and is no longer valid.

11. How can I change my will?

You can make additions to your will by signing a "codicil," with all the formalities of a will. The codicil must be in writing, dated and signed by you and two witnesses. You cannot change a properly executed will by writing revisions into the will, even if you initial and date the changes. Such changes are valid only if they occur before the will is signed and witnessed. If major changes are needed, consider making a new will.

12. Must a will be presented to probate court?

Yes, except in rare cases. A will can legally affect property distribution only if it is filed in probate court. Beneficiaries cannot receive land through a will until the will has gone through probate. Simplified probate procedures called "release from administration", and "summary release from administration" may be used in small estates if the total value of the estate is less than statutorily specified amounts.

13. What if I lose, destroy or spoil my will?

A copy may be valid if it was dated and signed in front of two witnesses and had not been revoked. If your will is lost or destroyed, make a new one.

14. How are wills revoked?

A will is revoked in any one of the following events: (a) if you, the testator, or someone in your presence and at your request or express written direction, tears, obliterates or destroys the will with the intention of revoking it; (b) you make a new, valid will; or (c) you make a codicil revoking rather than changing the will. In addition, if you are divorced, your marriage has been dissolved or annulled or you are separated with a separation agreement, any property granted under a will to a former spouse is revoked, unless a will expressly provides otherwise.

15. Are verbal wills valid?

A verbal will is not valid if you have a valid, written will. If you have no written will, a verbal will can be valid with regard to any property you own, except land. Property that can be transferred under a verbal will includes stocks, bonds, cars, coin collections, jewelry and appliances. A verbal will is valid only if you are dying, know you are dying and say what you want in your will to two competent, disinterested witnesses. The witnesses must put the will in writing and sign the transcription within ten days. The transcription must be filed in probate court within six months after your death.

16. Are wills from other states valid in Ohio?

Yes, if it is also validly executed in the state in which it was made. Consequently, the will must be made according to the laws of the state in which it was made.

17. Can I avoid Probate?

In most cases, not entirely. Probate is a legal process that transfers your property after your death. However, you can avoid certain property passing through probate by: (a) holding property jointly with the right of survivorship; (b) establishing *inter vivos* (living) trusts during your lifetime; (c) establishing payable on death bank accounts, or (d) creating transfer on death deeds. These alternatives should be pursued after talking with an attorney.

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Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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