

# Davis, Adams, Freudenberg, Day & Galli

## Attorneys at Law

John E. "Jack" Davis  
Richard D. Adams  
Ben E. Freudenberg

Six Hundred Northwest Fifth Street  
Grants Pass, Oregon 97526-2024  
P: 541-476-6627 F: 541-476-7048

Gregory T. Day  
Matthew G. Galli  
Charles H. Seagraves, Retired

### YOUR WILL

#### **What is a Will?**

A Will is a typewritten document, containing your direction for disposing of your property after your death.

#### **What are the requirements for signing a Will?**

You must be 18 years of age or more and of sound mind when you sign the Will. Generally, if you know the extent of your assets and the "natural objects of your affection" you are deemed to be of sound mind.

The Will must be witnessed by two persons who are not beneficiaries under the Will. They must see you sign the Will or they must hear you say it is your signature.

These formalities must be carefully followed. Otherwise, the Will might be challenged.

#### **What happens if you don't have a Will?**

Oregon law contains provisions for "intestate succession." These laws dictate that your property passes to your "heirs at law" if you do not have a Will. Under current Oregon law, without a Will, all of your property is directed to your spouse. That will remain true if you have children who are all born of your current marriage. However, if you have children of a prior marriage, the law says your children receive one-half of the assets and your spouse receives one-half.

If you have no spouse or children, your property passes to your grandchildren, your parents or your brothers and sisters. If you have no relatives, your estate passes to the State of Oregon. If you have a child under 18, the court may choose someone to take care of that child and the property passing to them.

#### **What are the benefits of having a Will?**

1. You specify to whom your property passes and under what conditions. For example, you can provide that property that would go to a child at age 18 when they are considered an adult, would instead be retained in a trust for their education until age 22.
2. You may disinherit someone or otherwise change the disposition the law would make.
3. You may give some or all of your estate to a charity.
4. You may nominate your choice for personal representative (executor) of your estate who is a person who takes charge and makes certain decisions about your property after your death. You may also excuse a bond for the personal representative to save that expense.
5. You may nominate your choice for guardian and conservator for minor children.
6. Your wishes are clear and definite, thereby reducing the possibility of confusion

and quarrels among your heirs.

### **Do I have to leave property to certain persons?**

Oregon law provides that a spouse may not be disinherited. A surviving spouse can elect to take twenty-five percent of the deceased spouse's estate regardless of a will. It is possible for a husband and wife to agree in writing to take nothing from the other's estate. Such an agreement must be carefully prepared.

Other than a spouse, no other person must be left anything. You may exclude any person you wish from your Will. It is important to name in your Will those who would be considered the "natural objects of your affection," such as children, so it could not be claimed you were of unsound mind and unmindful of your family.

### **What property does a Will control?**

The Will controls only property in your individual name. Property held jointly with another person will pass to them at your death. Life insurance proceeds and retirement benefits will pass to the named beneficiary.

### **How is a Will enforced?**

A special court process called probate is used to enforce the terms of the Will.

### **Who is responsible for managing my estate?**

The personal representative (executor) named in your Will pays all bills, gathers and protects your property, collects debts owed you, insures that income tax obligations are paid and then distributes the assets according to your plan set forth in the Will.

You may wish to pick someone who is not a member of the family if there could be hard feelings, based on your choice, or if no relative is qualified for the job. Banks with trust departments are often wise choices for this position.

If you do not have a Will, the court must choose a personal representative.

### **Does a Will avoid estate taxes?**

A Will with special language can reduce or eliminate estate taxes. The basic federal estate tax exemption is \$2,000,000.00 as of 2006. If the value of your estate is more than the exemption amount you should do special tax planning. With careful planning, \$4,000,000 or more can be protected from tax by a married couple.

The Oregon inheritance tax was until recently tied to the federal estate tax. Now there may be inheritance tax even though no federal tax is due.

### **Can I change my Will?**

Yes, so long as you are of sound mind. Changes in your assets or family situations often occur and are reasons for making changes. In fact, your Will and estate plan should be reviewed every few years regardless.

**PLEASE NOTE THE FOREGOING IS GENERAL INFORMATION. WE SHOULD DISCUSS YOUR SPECIFIC SITUATION IN DETAIL TO PREPARE YOUR WILL AND OTHER ESTATE PLANNING DOCUMENTS.**