

Davis, Adams, Freudenberg, Day & Galli

Attorneys at Law

John E. "Jack" Davis
Richard D. Adams
Ben E. Freudenberg
Gregory T. Day

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

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 direct your estate to a charity if you have no relatives.

4. You nominate your choice for personal representative (executor) of your estate. You may also excuse a bond for the personal representative to save that expense.
5. You 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 up to thirty-three percent of the deceased spouse's estate regardless. 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. If the real property is valued less than \$200,000.00 and personal property less than \$75,000.00 and there are no complications, then a small estate proceeding might be used instead.

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 \$5,250,000.00.

The Oregon inheritance tax is no longer tied to the federal estate tax. Now there may be inheritance tax even though no federal tax is due because the Oregon exemption is only

\$1,000,000 ..

The Oregon Legislature may change that exemption at some point in the future.

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.

What are the alternatives to a Will?

A living trust may avoid probate if properly implemented.

Beneficiary designations on retirement plans and life insurance provide direct payment. Joint ownership with rights of survivorship may be appropriate in some cases. However, there are risks and unintended consequences involved with these alternatives which should be thoroughly discussed before utilizing any of them.

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

Ben Freudenberg