

'TIS THE SEASON (TO UPDATE YOUR WILL)

December 5, 2016



One of the best gifts you can give your loved ones is updating your will, trusts, and other beneficiary designations. You may also give yourself a gift: peace of mind. If you have not looked at your estate planning documents in a while, it is time for a review. If you do not have a will or if you are wondering if it is current, it may be helpful for you to consider the following questions and comments.

DO I NEED TO WORRY ABOUT HAVING A (CURRENT AND PROPERLY SIGNED) WILL?

No one really dies without a will (dying intestate). In the event a decedent has not executed their own Last Will and Testament, the State of Tennessee provides one. This is not necessarily a problem, but most people prefer a will so that their express wishes will be carried out at the time of their death. If this is not a concern, the Tennessee Code provides that everything will go to your spouse (not less than 1/3) and children. If the

decedent has no spouse or children, your heirs are your parents, siblings and children of your siblings, in that order.

WHAT ARE THE REASONS FOR HAVING A WILL?

- To name a guardian for minor children you have at the time of your death.
- To make charitable bequests.
- To name an executor or personal representative, and successors if a named party is unwilling or not able to serve.
- To waive bond for your personal representative.
- To direct your executor or personal representative to distribute or sell any real estate you own at the time of your death. In the absence of express provisions, your real estate becomes the property of your “heirs at law” at the time of your death.
- To provide for the financial protection of a family member who may need extra protection from himself or herself, or from someone else.
- To provide for a surviving spouse and still direct where the assets go at the time of death of your surviving spouse. This may be helpful with a blended family.
- To establish special provisions for the management or disposition of ownership interests in family businesses or partnerships.
- To include “**Digital Assets**” (important matters you have online or access using the internet)

IF I HAVE A WILL, IS THERE ANYTHING ELSE I NEED TO DO?

Yes. In order for your will to do everything it is designed to do, proper titling of assets is essential.

IS IT EXPENSIVE TO HAVE A WILL DRAFTED?

Not really. A properly prepared and executed will is a powerful tool, but fees will vary depending on the complexity of the estate and local attorney fees – you may ask attorneys in your area for estimated pricing for their services. It is important to work with professionals who specialize in estate planning and understand current tax laws.

IS PROBATE DIFFICULT IN TENNESSEE?

No. It is an easy process in Tennessee. Please know that if a will is probated, it is filed in public records.

DO I NEED A REVOCABLE LIVING TRUST?

Not necessarily, but it may save time, money and avoid some family issues. It may allow a designated trustee to handle your affairs during your lifetime in the event you are not able to do it yourself (stroke or memory impairment).

CAN I WRITE MY OWN WILL?

Yes, handwritten (holographic) wills are recognized in Tennessee. You can also take out your own appendix, but I would not recommend it.

WHERE SHOULD MY ORIGINAL DOCUMENTS BE KEPT?

In a secure, fireproof location that could be found easily by loved ones. If it is in a safety deposit box, be sure to leave a note with location instructions with your personal papers at home. Another option may be to store the documents with your attorney or designated trust company. You may also file it with the Probate Court. There is nothing wrong with keeping it with other important papers in your home and having an executed copy at your attorney's office.

WHAT SHOULD I DO WITH MY PREVIOUS WILLS OR TRUSTS?

If you execute a new document, be sure to destroy any prior wills or trusts.

Note: Previously executed wills are sometimes kept in case the validity of a later will is challenged.

CAN I CHANGE MY WILL ONCE I SIGN IT?

Yes. There is an easy process called drafting a codicil. You may also revoke any prior wills and start over again.

JOINT OWNERSHIP WITH RIGHT OF SURVIVAL

If you own everything jointly with another person, this may alleviate the need for a will but it may be hard to title some assets this way

Ask your legal or other professional advisor about your particular situation in order to make certain that you do what is best for you and your loved ones. The gift of organized and properly prepared estate planning documents will be greatly appreciated by your entire family.