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OREGON

# ESTATE PLANNING YOUR WILL

*Prepare a will now, you never  
know when you'll need it*

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*There are many reasons for having a will. Your reasons depend on your family situation, the value of your estate, your obligation to dependents, and your desires for the kind of life your survivors will enjoy. A will is a legal document that takes effect at death. It is used to administer the estate, including transferring property ownership and making provisions for the care of minor children. A properly drawn will simplifies the administration of an estate, minimizes costs, and minimizes family conflict over property distribution.*

**A**t your death, your estate—that is, your money and property—passes to someone. To determine who gets your property, first decide which is non-probate property and which is probate property. Non-probate property is distributed according to a deed, title, or contract. Probate property is distributed according to your will or according to state law if you have no will.

## Non-probate property

When you die, the non-probate property you own automatically passes to someone without going through a court process called *probate*. Examples of non-probate property are real estate owned as tenants by the entirety, real estate owned jointly with rights of survivorship, bank accounts payable to "either or the survivor," insurance policies payable to a named beneficiary, government bonds with a coowner or beneficiary, and trusts if the trust agreement indicates how trust property is to pass at the death of the trustor.

After death, non-probate property passes to the co-owner or beneficiary. Survivorship rights in non-probate property cannot be changed by a will because the title, deed, or contract specifies who receives the property when the owner dies.

Owning non-probate property is usually appropriate when all owners

want property to pass at the death of one to the other(s) and when there are no tax considerations. However, it is not always the best way to own property. Seek advice from a lawyer and tax consultant before titling assets in joint names.

Non-probate property does not eliminate the need for a will. If you have both probate and non-probate property, you need a will to distribute the probate property. Even if all your property is non-probate, a will may be desirable to distribute the property if both owners or the owner and the beneficiary should die at or about the same time.

## Probate property

Probate property is all that you own that does not, by the way it is titled, have survivorship rights. Examples of probate property are your share of property owned as tenants in common, your share of household goods, and property owned only by you. Probate property is distributed at death either according to the directions in your will or under the laws of Oregon if you do not have a will. The probate property is distributed in a court procedure commonly referred to as *probate*.

## Distributing probate property without a will (intestate).

When you die without a will (intestate), probate property passes

according to the law of the state in which you are a resident at the time of your death. When property passes under Oregon law, it passes only to the surviving spouse, blood relatives, relatives of half-blood, and children adopted when they were minors.

The following information outlines the distribution of probate property if a resident of Oregon dies without a will.

1. If a deceased person has a surviving spouse, Oregon law provides that the surviving spouse will receive:
  - The entire estate if the deceased person has no children or descendants of children (grandchildren, great grandchildren, and so forth).
  - The entire estate if all the children of the deceased person are also children of the surviving spouse.
  - One-half of the estate if there are one or more children or their descendants who are not children of the surviving spouse (for instance, children of a former marriage). The other half of the estate is divided among all of the deceased's children or descendants of deceased children.

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2. If a deceased person has no surviving spouse, but has children or descendants of children, the estate is divided among the living children and the descendants of children who are not alive.

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3. If a deceased person has no surviving spouse and no descendants, property then passes to ancestors and their descendants. For example, if a deceased person has no surviving spouse and no descendants, property will go to:
- parent or parents;
  - if no parent survives, to brothers and sisters and to descendants of deceased brothers and sisters;
  - if no parent or descendant survives, to grandparents and descendants of deceased grandparents;
  - if the deceased has none of the relatives mentioned, property will go to the State of Oregon.

When property passes under Oregon intestate law, it passes by formula with no attention given to special needs of family members. If a person writes a will, provisions can be made for property to pass according to his or her wishes. By writing a will, a person can consider the special needs of his or her heirs.

**Distributing probate property with a will (testate).** When you die with a will (testate), your probate property is distributed according to the instructions in your will. You determine who receives how much of your estate. Property can be left to relatives, non-relatives, and institutions.

Indicating in a will who receives property when you die is called a *devise*. For example, "I leave my

diamond ring to Betty Fields and my piano to Harry Chart," or "I leave \$1,000 to Marie Bancroft."

A residuary devise leaves a person all or part of everything that is not disposed of by a specific devise. An example is "I leave one-half of my residuary estate to my niece, Ruth Kilmer."

A will can indicate what happens if a person who is to receive property under your will is not living at the time of your death. For example, "I leave \$50,000 to my son John Kilmer; if John is not living at my death I leave this to my daughter Ruth."

When writing a will, you have flexibility to choose who receives your property after you die. Think carefully about what you want to happen.

## Appointing a personal representative

A personal representative, sometimes called the *executor*, handles the business affairs of your estate. This may be an individual or a corporate trustee such as a trust company. A personal representative probates the will if there is one, safeguards and manages the assets, has assets appraised, sees that the bills and taxes are paid, distributes the estate to the correct people, and makes reports required by the court. When there is no will, the court selects a personal representative. The court looks first to the surviving spouse, then to relatives of the deceased.

When you write a will, you may nominate a personal representative. At your death, the court reviews and appoints this person if it feels this is in your best interest and if the nominee is willing and able to perform the duties.

When you nominate a personal representative, consider competency to handle money matters. Discuss the nomination with the individual and with your family. You may nominate as your personal representative a corporate trustee, such as a bank trust department. While a trust company has experience in handling estates and will

not die or become incompetent, it might not give the same personal interest as a friend or relative. Also, a corporate trustee may not be economically feasible for small estates.

Your will can provide directions for the personal representative, making it possible for your wishes to be followed after your death. Oregon law requires the personal representative to file a surety bond. However, your will may waive the requirement for a surety bond and save your estate that cost.

## Appointing a guardian or conservator

A guardian takes the place of a deceased parent in caring for a minor child (a child under the age of 18). A conservator takes care of the money and property of a minor child. The same person may serve as guardian and as conservator, or one person may be guardian and someone else conservator.

### Guardian

If a minor child has no surviving parents, the court appoints a guardian. The guardian has the powers and responsibilities of a parent. In making the guardianship appointment, the court appoints the person most suitable and willing to serve. The court considers first the person nominated in the parent's will. If there is no nomination, the court considers the person nominated by the child if the child is at least 14 years old.

The nomination of the guardian in the will does not guarantee that this person will be appointed. However, the nomination lets the court know the wishes of the deceased parent and greatly increases the likelihood of that person's appointment.

In nominating a guardian, consider the values, lifestyle, and attitudes toward child rearing of the potential guardian. Talk to that person as well as to other family members. Make provisions in your will for appointing another guardian in case the one nominated cannot accept the responsibility.

## Conservator

If property passes to a minor child, the court must appoint a conservator to manage the property. The court appoints the person most suitable who is willing to serve. Preference is given to the person nominated in the will of the deceased parents.

If you have not nominated a conservator in a will, the court will choose a person without your input.

A parent may eliminate the need for a conservator by arranging a testamentary trust in the will. At death, the estate is passed to a trust managed for the benefit of the child. The will can set up the trust, name the trustee, and provide instructions for the trustee. A trustee may be an individual or a trust company.

A conservatorship, by law, terminates on the child's eighteenth birthday, and the child then has the property to manage. With a trust, distribution of the property to the child can be postponed until the child is older and presumably more competent to manage the property. Leaving the property in trust for the child usually allows more flexible arrangements than leaving the property outright to the child.

## Making a will

You reasons for having a will depend in part on your family situation (see Table 1 on page 4). If you need a will, now is the time to do it. Anyone who is at least 18 years old or is married and who is of sound mind may make a will. You may write your own will, however, legal advice ensures that your plans will accomplish your objectives. No matter how simple your will, the help of an attorney is desirable.

If you have an attorney for other business purposes, consult that attorney about a will. If your attorney does not do estate planning, he or she may suggest another attorney. If you do not have an attorney, a friend may be able to suggest one, or the Lawyer Referral Service can refer you to an attorney. Their toll-free telephone number in Oregon is 1-800-452-7636.

Before seeing an attorney, compile this information:

1. A list of people to be included in your will.
2. A list of your closest relatives.
3. A list of all your property, both probate and non-probate. Include the value of the property and any indebtedness against the property.
4. Ideas about what specific property you want to go to specific people.
5. Ideas about who ought to be the children's guardian, if you have minor children.
6. Ideas about the management of property being left to a minor child.
7. Ideas about the financial needs of those people you are planning to provide for.

## Last but not least

A secure place to store your will is your safe deposit box. In the past, some authorities advised against this because the box could not be opened until a State Treasurer's representative was present. This procedure is no longer followed in Oregon, so a safe deposit box is a reasonable storage place. Some people prefer to store their will with their attorney. The important thing is to store your will where it is easy for someone to locate when you die and where it will not be lost or accidentally destroyed.

Periodically review your will to ensure that it meets changing conditions and continues to serve your best interests. Review your will whenever your family situation changes—as a result of marriage, divorce, death of family members, birth or adoption of children, children reaching adulthood, and substantial changes in the dollar value of your estate.

You may change your will anytime before death, but you must change it correctly. Never change a will by crossing out sentences or writing on the original document. In some cases, changes can be made with an addition called a *codicil*. In some cases, a will is replaced by a new will.

You may revoke your will anytime before death. It is revoked when you destroy the will with the intent to revoke it. It is also revoked by executing a new will that expressly revokes any prior will.

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## For more information

The following estate planning titles are available. Each title is available without charge.

Morrow, Alice M., *Estate Planning with Minor Children*, Oregon State University Fact Sheet 313 (Corvallis 1992). No charge.

Morrow, Alice M., *Revocable Living Trusts*, Oregon State University Fact Sheet 314 (Corvallis 1992). No charge.

You may order up to six no-charge publications. If you request seven or more no-charge publications include 25 cents for each publication beyond six. Send order and payment to:

Publications Orders  
Agricultural Communications  
Oregon State University  
Administrative Services A422  
Corvallis, OR 97331-2119

Table 1.—*How the need for a will changes with the family situation*

Family	What happens with no will	Considerations that may indicate the need for a will
Unmarried—no children	Property passes to parents or parent. If no surviving parent, property passes to brothers and sisters or to the children of deceased brothers or sisters. A non-relative will not inherit.	Passing property to parents may make their estate planning more difficult. If parents would need financial help for their old age, a will could set up a trust for their benefit and indicate who is to get whatever is left in the trust at the parent's death. A will is necessary if property is to go to anyone other than the closest relative.
Unmarried—with children	The property of the parent passes in equal shares to children. The court appoints a conservator to handle minor child's estate and child will receive the money and property at age 18. The court appoints a guardian for minor children if there is no surviving parent. If parents have never married, the property of the father passes to children only if paternity has been proven under law or the father has acknowledged paternity during his life.	The financial needs of children may not be equal. A conservator may be nominated in a will or alternate plans (such as a trust) made for the management of the children's estate. A divorced person may want to plan so that the former spouse will not have control over the children's money. A will can indicate who the parents would like to care for minor children in the event that there is no surviving parent. A father and mother who have never been married to each other need to pay particular attention to estate planning.
Married Couple—no children	Property passes to the surviving spouse.	Plans should provide for what should happen to property if both die at or about the same time.
Married Couple—all children are their children	Property passes to the surviving spouse.	Passing property to the surviving spouse gives that person freedom in the use of the money. It also assumes that the surviving spouse will look after the financial interest of the children. Think about how the spouse would care for the children and the possible effects of a remarriage. In larger estates (over \$600,000), passing the entire estate outright to the spouse may have negative estate tax consequences.
Married Couple—one or both of whom has a child who is not the child of the other spouse	If the deceased spouse has children who are not the children of the surviving spouse, property is divided; one half passes to the surviving spouse and the other half passes in equal shares to each of the children of the deceased. A conservator is appointed to manage the estate of a minor child.	The division between spouse and children may leave the spouse, particularly when there is a small or modest estate, with inadequate money for support. Plans can be made for the entire estate to pass outright to the spouse or for part of the estate to pass in trust for the benefit of the spouse and then to the children at the death of the surviving spouse.



*This publication is not intended as a substitute for obtaining necessary legal advice.*

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