A Will of Your Own

Answers to Questions about Your Property and Heirs

Extension Bulletin 807
January, 1963

Cooperative Extension Service
Oregon State University
Corvallis
# CONTENTS

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have You Made a Will</td>
<td>4</td>
</tr>
<tr>
<td>What Is a Will?</td>
<td>5</td>
</tr>
<tr>
<td>What Is Meant by Property?</td>
<td>5</td>
</tr>
<tr>
<td>Ways of Owning Property</td>
<td>5</td>
</tr>
<tr>
<td>Is Joint Tenancy or Tenancy by the Entireties a Substitute for a Will</td>
<td>7</td>
</tr>
<tr>
<td>Who Gets Property If There Is No Will?</td>
<td>8</td>
</tr>
<tr>
<td>Why Have a Will?</td>
<td>8</td>
</tr>
<tr>
<td>Who May Make a Will and Who Should Have One?</td>
<td>10</td>
</tr>
<tr>
<td>Oregon Requirements for Wills</td>
<td>10</td>
</tr>
<tr>
<td>Preparation of Wills by Lawyers</td>
<td>11</td>
</tr>
<tr>
<td>Formalities in Wills</td>
<td>12</td>
</tr>
<tr>
<td>Steps in Making a Will</td>
<td>13</td>
</tr>
<tr>
<td>What Does a Will Contain?</td>
<td>15</td>
</tr>
<tr>
<td>The Role of the Executor</td>
<td>15</td>
</tr>
<tr>
<td>Probate Procedure</td>
<td>17</td>
</tr>
<tr>
<td>Property Owned and Wills Made in Other States</td>
<td>18</td>
</tr>
<tr>
<td>Revoking a Will</td>
<td>18</td>
</tr>
<tr>
<td>Letter of Last Instructions</td>
<td>19</td>
</tr>
<tr>
<td>Valuable Family Records and Instructions</td>
<td>20</td>
</tr>
<tr>
<td>The Language of the Law</td>
<td>23</td>
</tr>
</tbody>
</table>

The author expresses appreciation to the Oregon State Bar and its Committee on Public Service and Information for their assistance in reviewing the manuscript and making valuable suggestions about the material included in this bulletin.

A lawyer who resided in a small village was famous throughout the state for drawing up wills. When a wealthy man died, there was much speculation as to the value of his estate, and the town gossip set about to find out. He went to see the lawyer, and after a few preliminary remarks about the deceased, said rather bluntly: "I understand you made his will. Would you mind telling me how much he left?"

"Not at all," answered the attorney, resuming his writing, "he left everything he had."

So it is with all of us. Someday we will leave everything we have. There are three inescapable events which everyone should recognize: (1) you are going to die, (2) "you can't take it with you," and (3) someone else is going to get your property. A sensible person makes suitable plans to pass on his estate.

When we use the word "estate" perhaps the image of a large piece of real estate flashes through your mind. But there is another meaning. For our purposes estate is a broader term referring to all the property that a person owns—personal property as well as land.

This bulletin presents basic information about wills as a means for distributing your estate. It is not meant to answer complicated questions that arise in unsettled estates or to give legal advice or to answer questions about personal legal matters. These are problems which can only be handled by a well-informed lawyer. The material presented here is designed to help Oregonians who have accumulated estates, or who are accumulating estates, understand certain simple procedures about wills and transfer of property. If you have some knowledge of the law, if you know what your rights and obligations are, you can protect your interests and those of your family. You will also be better able to ask intelligent questions of a lawyer, as well as realize the advisability of seeking professional advice in order to avoid difficulty.

It is important to realize that a will is only part of estate planning—one part of a more elaborate process that should run for most of a person's adult lifetime.

Estate planning is a process of arranging a person's affairs to produce the most effective disposition of his
capital and income. It is an attempt to work out an arrangement which best suits the financial requirements, personalities, and welfare of those concerned, and at the same time produces the most economical method of disposing of property. Depending on the size of the estate, this might involve taxes, gifts, trusts, annuities, life insurance, and special devices such as partnerships or corporations in farms and businesses. These topics are much too involved and too large to consider in one bulletin and this bulletin will cover only the subject of wills.

Since laws are not the same in all states, it is important to remember that this information refers to Oregon laws.

Have You Made a Will?

Practically everybody intends to make a will before he dies, but court records show that only about half of us really do. Why don't more people make wills? Let's face it, we don't like to talk about death . . . particularly our own. For those who are superstitiously inclined, it should be enlightening to know that there has never been one bit of evidence to show that making a will has hastened death. In fact, it could be argued that the peace of mind resulting from the making of a will might even tend to prolong life. Replace any unpleasant thought of death of the testator by the happier thought of providing for those you love who will go on living.

Some people put off making a will because they are in good health and "there's plenty of time." It's well to remember that people do die from things other than poor health.

Many persons hesitate to draw a will, feeling that such a document, once executed, exists for all time. Nothing is further from the truth. A will is operative and binding only at the date of the maker's death. Before death, you can make any number of wills, each of which in succession should include terms that revoke and cancel all prior wills.

For most people, just plain inertia is probably the reason a will is not made. It seems peculiar that so many people will spend a lifetime in working and saving in order to build an estate and then will not take the relatively few minutes required to draw up a will. It is the privilege of every person to see that particular relatives or friends get what is intended for them. The wise person makes plans for the transfer of his property while he is young and healthy. He can then plan without the emotional strain of illness or impending death.

Let us hasten to add that you may not have a will because you do not need one. Some situations are such that a will is not necessary. But your conclusion about whether to make a will or not should be based on knowledge of your situation and what the law allows—not on an offhand decision or the pattern set by a friend or relative.

Whether your decision is to make a will or not, it is wise for you and your family to sit down and discuss the matter of distribution of property at death. Use of foresight can prevent much unhappiness and unnecessary expense; with careful planning neither of these is necessary.

If you and your family haven't studied your situation and made your plans, do it now! This bulletin is designed to help you get on with the job of preparing your will.
What Is a Will?

A will is a legal document by which a person disposes of his property, to take effect after death. It is the only way of assuring that his property will be distributed exactly as he wishes. A properly drawn will greatly simplifies the distribution of an estate; it not only hastens settlement for the heirs but often avoids financial and legal tangles.

If a person holds property solely in his own name, when he dies his estate is administered under the direction of the probate court, whether he has a will or not.

If a person dies without leaving a will, he is said to die intestate, and his estate is administered according to the laws of the state in which he has legal residence. This tells us that you may, if you choose, die without leaving a will and the law will provide who will inherit your property. Thus if you do not leave a will of your own, the law will provide you with a substitute for a will—one which may satisfy your wishes or may prescribe a different division of your property than you wish.

If a person dies having made a will, he is said to have died testate, and his estate is administered according to his wishes as set forth in his will. The person who makes and leaves a will is called the testator, or, if a woman, a testatrix. The person who dies is called the decedent.

What Is Meant by Property?

We have been referring to distribution of property. Just what do we mean by "property"? Through the ages property has generally been divided into two classes—real property and personal property. Real property, sometimes called real estate, is the land, buildings, trees, fences, and other things definitely attached to the land, as well as oil, water, and minerals under the surface. Personal property is everything other than real property. This includes such things as stocks, bonds, money, bank accounts, livestock, machinery and farm equipment, feed and supplies, automobiles, furniture, clothes, and jewelry. These are sometimes called moveables.

The property (both real and personal) which a person leaves at the time of death is referred to as an estate. A gift of personal property by will is called a legacy or bequest. A gift of real property by will is a devise. The nature of the interest a person has in property while living determines whether that property becomes a part of his estate.

Ways of Owning Property

[The Effect of Title on the Transfer of Property at Time of Death]

There are several ways a person can own property. The best way for a family to hold title to property depends upon the family situation.

Sole ownership of real estate

If a man owns real estate solely in his own name, it becomes a part of his estate at the time of his death. Such
ownership is described legally as “absolutely in fee simple” or “fee simple absolute.” Another term to show sole ownership is “in severalty.”

**Co-ownership**

If the deceased holds property in *co-ownership*, the determination of whether his share will become a part of his estate is governed by the kind of ownership which existed. Three types of co-ownership can exist in Oregon.

- If two or more persons own land together as *tenants in common* and one dies, the latter’s share of the property becomes part of his estate. It goes to his heirs and not to the other tenants or tenants in common, unless they happen by law to be heirs.

- If co-owners hold title to property as *joint tenants*, when one dies, the survivor becomes owner of the entire interest in the property. Nothing passes to the estate of the deceased. This form of ownership provides right to survivorship. Some states have enacted laws which appear to abolish this right of the surviving joint tenants and which provide that the deceased tenant’s interest shall go to his heirs or to whoever he may have willed his interests. Oregon is one of these states. If you look up “Joint Tenancy” in the Oregon Revised Statutes, you will find that “Joint tenancies are hereby abolished.” This simply means that joint tenancies cannot happen automatically by operation of the law. However, they can come into being expressly—by use of specific words—“A and B as joint tenants with the right to survivorship and not as tenants in common.”

- Another form of co-ownership is *tenancy by the entireties*. This form of ownership applies to husband and wife, and only to real property. There is no need to have an agreement or special words. The law automatically grants this form of ownership if at the time of transfer of property the people were *in fact* husband and wife. There is right to survivorship.

**Bank accounts**

- If owned solely by the deceased, the bank account is closed at time of death and becomes a part of his estate.
- Bank accounts held in the names of two people payable to either or the survivor go solely to the survivor upon the death of one of the parties, not to the estate of the deceased.

**Safe deposit boxes**

- If held as sole owner, a safe deposit box cannot be opened except by the administrator or the executor (the person named to settle the estate). A representative of the State Treasurer must be present for the opening.
- If held in joint ownership, the box can be opened by the survivor in the case of the death of one of the owners. However, the box can be opened only in the presence of a representative of the State Treasurer.

**Government bonds**

- If owned solely by the deceased, government bonds go to his estate.
- Bonds held in co-ownership—title of registration reading “John A. Doe or Mary E. Doe”—go to the survivor as the sole owner if either dies. Either one may cash the bonds while they both live.
- A beneficiary named on a bond—title of registration reading “John A. Doe, payable on death to Mary E. Doe”—will become the sole owner upon the death of the registered owner. The
bond belongs to John A. Doe as long as he lives. Upon his death, Mary E. Doe becomes the owner and the money will be paid to her upon the presentation of a death certificate along with the bond.

**Life insurance**
- If a beneficiary is named in a life insurance policy, the proceeds go to the person named and do not become a part of the estate for probate purposes. It is important to name a contingent beneficiary in the policy to receive the proceeds in the event that the first named beneficiary dies before the insured. Proceeds would become a part of the estate if beneficiaries named in the policy are not living.
- The insured may name his estate as the beneficiary of his life insurance. In this case the proceeds do become a part of the estate. These insurance proceeds are subject to probate costs. A person might want to have a small amount of his insurance payable to his estate for payment of debts.

**Personal property**
- If held solely in the name of the owner, personal property becomes a part of the estate.
- Co-ownership of tangible personal property does not automatically carry survivorship rights. Unless there is an express written agreement about survivorship, each individual holder's share becomes a part of his estate. The same is true for some kinds of intangible personal property such as bank accounts.

In summary, property, both real and personal, owned in either one person's name or as a tenant in common, becomes a part of his estate at his death. Life insurance for which no living beneficiary is designated or which names the estate is also included.

Property held by two persons as joint tenants with right to survivorship, or by husband and wife as tenants by the entirety, will pass automatically on death and is not subject to disposition by will.

**Is Joint Tenancy or Tenancy by the Entireties a Substitute for a Will?**

In some cases joint tenancy or tenancy by the entireties may be a useful legal device, but countless problems arise from their indiscriminate use. There are tax hazards of which few people are aware, as well as other complications and expenses.

Tenancies are not adequate substitutes for a will in most cases. Tenancy by the entireties, of course, applies only to real property.

Even in the case of joint tenancy, it is not likely that all of a person's property is in joint ownership at the time of death. Therefore, it would be necessary to probate that part of an estate which is not held in one of these forms.

If your property is held under joint ownership, it is best to see your lawyer to find out whether it is the arrangement you really want.
Who Gets Property If There Is No Will?

[Division of Property According to the Oregon Law of Descent]

In a general way, the following are a few of the provisions of the Oregon laws on the descent and distribution of property when a person dies without leaving a valid will.

- **Distribution of estate if survivors are spouse and children.** In the case of real property, the spouse takes dower or curtesy. Dower is a widow's right to the use for life of one-half of her husband's real estate. Curtesy is the widower's right to the use for life of one-half of real property. The other half goes to the child or children (divided equally). Grandchildren take their deceased parent's share.

- **Distribution of estate if sole survivor is spouse (no children).** All real and personal property go to the surviving spouse.

- **Distribution of estate if survivors are parents (no spouse, no children).** All real and personal property go to parents, sharing equally; a surviving parent takes all.

- **Distribution of estate if survivors are brothers and sisters (no spouse, no children, no parents).** All real and personal property go to brothers and sisters, sharing equally, with children of deceased brothers and sisters taking their share.

- **Distribution of estate if there are no known surviving relatives.** Property passes by escheat to the state.

Why Have a Will?

We have just seen what happens to the estate when a person dies "intestate." Now let's summarize some reasons for having a will.

The most common reason for having a will is to change the way property would be distributed by law. Perhaps a young man with a wife and children may wish his entire estate to go to his wife either for life or outright. This is particularly true where there are minor children. If he did not make a will, the law would require a guardian to be appointed to represent the interests of any child receiving more than $1,000. This often is the mother, but she must post a surety bond and make annual reports to the court. Unless permission is granted by the court, the guardian must preserve the child's share until he reaches age 21 or marries.

Perhaps you wish to give part of the estate to nonrelatives or to make donations for charitable purposes.

Another example might be a case where one of the children because of a handicap needs a larger share; or one
child may have received a college education while another stayed at home to help run a business or farm. Still another may have given assistance to the parents.

A further example might be a special situation where husband and wife both have children by previous marriages or where parents of either husband or wife are especially needy.

All of these relate to changing the distribution of property to something other than that provided by law. However, after you have looked over the general rules concerning laws of descent in Oregon, you may feel that these meet your particular needs. Even though they do, there are other important reasons for preparing a will.

By making a will, a testator may name an executor who understands the family situation or who is particularly efficient in estate management to handle his estate after his death. The executor may be given broad powers by the will to handle the estate without obtaining court permission for each specific action. You can also relieve him of the necessity of obtaining surety and thus save expenses. If there is no will, a court appoints an administrator who handles that job. He does so according to state law and court instructions, which, though legal, often are not what you have intended. He has only limited powers. Additional expenses also may be involved when an administrator is appointed. One is the expense of a surety bond. These costs come out of the estate. The cost of drawing a will is often less than the premium on the surety bond necessary when there is no will.

Guardianship of minor children can be established, subject to court approval, by a will. For instance, you and your husband might intend that your sister be named guardian if you both died. Without wills to guide the court, a different guardian might be named.

But there is more to guardianship than just caring for the child. If an estate is left to a child and a guardian is not named in a will, a guardian is appointed by the court for the child’s interests in the estate. There will be the expense of a surety bond. The guardian must file an annual accounting with the court. If the deceased had, by means of a will, left all the estate to the surviving spouse, there would be no occasion to have a guardian appointed for the estate.

Consideration should be given to the possibility that both husband and wife might die together in a common disaster (for example, in an automobile or plane crash) or within a short time of each other. This is particularly important for a husband and wife who have no descendants. Suppose Mr. and Mrs. Henry Smith were on a trip and involved in a serious accident. Mr. Smith was killed instantly; Mrs. Smith survived him by only a few minutes. By law (if there was no will) she inherited all his property for the few minutes. Upon her death, the property went to her relatives. This sort of situation could be avoided by having a will with a clause stating how property should be divided in case both parties die in a common disaster.

Sometimes husband and wife own property in joint tenancy or tenancy by the entireties, feeling that this is a substitute for a will. Of course this property cannot be disposed of by will. It simply passes to the survivor. But most people own some property that is not held jointly so a will is advisable in that case. In addition, both joint tenants may wish to make mutual wills.
controlling disposition of jointly owned property when both have died.

There might be possessions you want specific persons to have. Perhaps there are family heirlooms which you desire your eldest child to inherit. If no will is made, there is no legal assurance that he will get them. The possibility exists that, should a dispute arise concerning such personal effects, they might have to be sold at public auction in order to divide the estate.

Perhaps one of the most valuable assets which comes from making a will is the result of the family's working together. All family members develop understanding of the family's financial situation—a means to avoid friction among heirs when the estate is settled.

Who May Make a Will and Who Should Have One?

Any person who has reached his 21st birthday, who is of sound mind, and is not under duress or undue influence may make a will.

Closely related to this subject is who should have a will? Too many of us think that only the very wealthy should have a will. In reality, the man of modest means may have a compelling need to plan for transfer of his estate. Providing for transfer of his estate with minimum costs is more important to him, since there is less money to provide for the overall needs of his family. Legal costs involved in winding up an estate may be greater if a person dies without a will, because the court has to appoint an administrator under bond to settle the estate. It may also be much easier for the family if there is a will.

It is just as important for the wife to make a will as it is for the husband. Each should make a will. Someone has said that there is no need for both husband and wife to make a will if you know which one will die first.

Note: There are some situations where a will is not necessary. However, the decision to remain without a will should be based on thorough knowledge of the facts in your situation and what will happen to your property without a will.

Oregon Requirements for Wills

In Oregon the will must:

- Be in writing. It is immaterial whether it is written on paper, parchment, or any other substance; whether it is written by hand, or is typewritten or printed; or whether it is written in ink or by lead pencil.
- Be signed by the testator (person making the will). Any form of signature is ordinarily sufficient if the testator intended it as a complete signature. The testator may sign a mark, such as "X".
- Be signed at the bottom or end.
- Be signed by the testator in the presence of two witnesses neither of
which are beneficiaries under the will. The testator must inform the witnesses that the document which he is signing before them is his will. The signatures of the two witnesses must be added in the presence of the testator. Oregon law does not provide that the witnesses sign in the presence of each other but this is desirable.

- Make provisions for children (if any) or at least name them. If no provision is made, the children will get their share as if there was no will. Those who wish to disinherit children give them a small amount (such as $1) in the will as evidence that they were not forgotten.

- Provide at least one-fourth of personal property for the spouse in addition to dower or curtesy. If not, the spouse may elect to take one-fourth of the personal property of the decedent in addition to dower or curtesy even though the will does not so provide. Dower is the widow’s right for life of the use of one-half of her husband’s real estate. Curtesy is a like right for the husband.

It is not legally required that a will be dated, but it is desirable from a practical standpoint that it should be.

Preparation of Wills by Lawyers

It is legal for a person to make his own will, but with few exceptions it is pretty poor sense. Except for complicated wills, the fee charged by an attorney is small. The utmost technical accuracy is necessary in order to be sure that your desires will be executed as you wish them to be. Perhaps you feel that you can say just what you mean in simple terms without using all the complicated sounding legal phrases. Perhaps you can, but the real test will come in the courts after your death. The phrases and words used in wills prepared by a lawyer have been tried in the courts and have exact meanings attached to them, so that there is no question about their intent. On the other hand, if you write your own will, you may say “exactly what you mean” but the words may not mean the same to others who read them after your death. Remember that you will not be around to do the interpreting when the time comes to probate the will.

Also, if a will does not conform to legal technicalities, it is no good at all. Homemade wills have been the source of much expense and trouble. Sample forms of wills can be obtained which can be completed by filling in the blank spaces, but unless the simplest type of will is to be drawn this form should not be used. Even where these prepared forms can be used, there is chance of error. The maker might fail to have the proper number of witnesses or fail to sign in their presence.

Costs are rather modest in comparison to the time, trouble, and expense often involved in settling estates. Simple wills may begin at $15 or $20. More complicated wills cost more. The cost is directly related to the time and effort needed for the lawyer to draw up a will that will meet your needs. Ask your lawyer what fee will be charged before you give him the go-ahead on preparing your will.

The feeling of assurance that your family will get the estate as you want it distributed will justify the expenditure of a few dollars for the service of a competent attorney.
We have made many references to the need for meeting certain formalities such as signatures, proper number of witnesses, a perfect copy of the will, etc. Your lawyer will see that your will conforms to the necessary formalities.

Perhaps a few cases will serve to drive home the importance of a properly prepared will.

One requirement is that the signature of the testator be placed right after the last sentence of the will itself. This is necessary to prevent fraud—to eliminate the possibility that someone might add a typed paragraph either before or after the signature and thus change the terms and intent of the will.

A surprisingly large number of cases are brought to court to determine whether the signature was at the end of a will, particularly where a rather confusing printed form was used by a testator who tried to write his own will.

One case reports that an intelligent, literate woman bought a will form at a stationery store on which she wrote her wishes for the disposal of her property. There was not enough room for her to write all she wanted above the dotted lines for signatures of maker and witnesses, so she continued her writing below. She and the witnesses signed on the dotted lines. Everything seemed in order. There was no question but that she was of sound mind at the time; no doubt as to how she wished to dispose of her property; no dispute that the witnesses saw her sign, knew she meant the document to be her will, and signed as witnesses. Nor is there anything necessarily wrong with a will made out on a printed form. But she hadn't signed it at the end; and, in the state where she lived, the law required that a will be signed at the end. The court would not permit the document to be given effect as her will . . . could not consider the writing above the signature as a will and ignore what followed . . . inasmuch as she had written it as a single, consecutive expression of her wishes.

Another example of need for certain formalities is shown in the case of Mrs. Conway. Mr. Thomas asked two friends if they would come over to the home of his sister, Mrs. Conway, to witness the signing of her will. Two or three days later he drove them to her house. They waited in the living room while Mr. Thomas went into the dining room. In a few minutes the two witnesses were called in; Mrs. Conway was wheeled in. Mr. Thomas told her to “sign this paper here,” and she did. Then the witnesses signed. Later, after Mrs. Conway's death, this paper was offered for probate; but the court would not accept it as her will. The witnesses testified that, at the time of signing, Mrs. Conway had not shown, either by word or deed, that she knew it was her will. Neither she nor anyone else in her presence had asked the witnesses to sign as witnesses to her will.

This is an example of the fact that the maker of the will, in the presence of the witnesses, must give definite indication that this is his will. In this example, Mrs. Conway was age 85 and infirm at the time of signing. The requirement—like the others for a valid will—is intended to protect anyone from being imposed upon in making what may be a last, and hence irrevocable will.
Steps in Making a Will

1. Before going to a lawyer, list all of your property carefully. In the case of stocks and bonds, include dates of purchase, serial numbers, if any, dividends, sales, and other facts about holdings. List life insurance policies and their beneficiaries. In the case of real estate, show the location of the property and list the indebtedness against it and any law suits pending which involve the property.

Check titles to real estate, mortgages owned, and bonds to determine if they are owned solely or jointly. Your attorney can interpret the types of ownership for you. It is not necessary to insert all these details in the will unless the property is to go to several persons, but it is well to have a list of them to help you see clearly what property you own and to help convey these details to your attorney.

2. Make a list of all persons who may have a right to expect to inherit from you. If there is a surviving spouse or child or children, no other persons need be mentioned unless you wish to make a gift to such persons.

3. Decide what distribution of property will best serve the needs of all concerned. This should be talked over in the family, especially between husband and wife. Consideration should be given to any property owned by some members of the family and to the amounts and beneficiaries of life insurance policies.

4. Write out in your own words what you wish done with your property. You may tell this to the attorney without writing it if you prefer. However, writing it out will clarify your own thinking and help get these ideas across to your attorney.

5. In making bequests, be sure to give names and addresses of those to whom the bequests are made and the relationship to you, if any. Consider possibility of births, deaths, and marriages. While the will can be changed at any time, there is always the possibility that it will not be changed.

6. Because the value of an estate may change considerably between the drawing of the will and your death, you should make bequests in percentages rather than in definite amounts.

7. Go to your lawyer and talk over your wishes with him. He can help with any particular problems and give advice about your plans. Find out what he will charge to draw up your will or other papers he may recommend.

8. If a will is the answer, you will want to select an executor who will be named in the will. This may be a person who knows and understands the family situation or a trust company or trust department of a bank. You may also name an alternate executor to serve if the primary executor dies.

9. If your problems are complicated or out of the ordinary, it is a good plan to have the attorney prepare a rough draft of the will for you to read. He will put into legal terms the wishes which you have written in your own language.

10. Check over the rough draft, think it over a few days if you wish, and make any changes you feel necessary. (Note: This copy is not a valid will.)

11. When you are satisfied, a final copy will be made. This must be signed before two witnesses (Oregon law). It is not necessary for the witnesses to know the contents of the will, but they must know that they are witnessing the signing of a will. They should not be
named as beneficiaries. You should choose witnesses of good character who are able to vouch for your sanity and for the details of the signing at the time the will is drawn. Try to select those who are likely to be easily found when the will is probated—young and healthy individuals, permanently located in the community. The attorney and his secretary often serve as witnesses.

12. If there is more than one sheet to the will, all pages should be carefully attached with your signature or initials on each page.

13. It is well to have at least two copies of the will made. Place the original (signed copy) in your safe deposit box with other valuable papers or leave it with your lawyer if he has a fireproof safe. Some authorities suggest that you should not place the will in the safe deposit box on the basis that when a person dies his safe deposit box is sealed until it can be opened in the presence of a representative of the state tax department. However, this objection has little validity in Oregon, since it is usually only a few hours or a day or two before the box can be opened. The will would certainly not be presented for probate in that period of time. One of the other copies could be used for reference in the interim. If a bank is named as executor, the will may be left at the bank where it is kept free of charge in a sealed envelope in a fireproof and burglar-proof vault. You may leave the will with the county clerk. It will be recorded and put in safe keeping. The fee is $1. If you leave it in any of these places, you are entitled to have it back at any time you wish. You should take no chances of any possibility of a will being lost, destroyed, or stolen. The original should never be kept at home—and only the original will should be executed. The copy may be kept at home or you may choose to leave it with your attorney, if he does not have the original. Be sure someone in the family knows where a copy of the will is, or leave a letter of instructions about it in your safe deposit box. The important thing to remember is that the will should be kept in a safe place, since the entire estate will be distributed by the will and the future welfare of the family or relatives of the testator may be dependent upon it.

14. A will may be changed whenever a testator wishes—but it must be done correctly. In some cases this may be done by adding to it; this is called a codicil. A codicil is a little will tacked onto the big one. A codicil must be dated, signed, and witnessed and requires the same legal formalities as the will. It is important that you do not cross out or change any part of the original will. This would have no legal effect and it might invalidate the will. The best way to avoid trouble is to have a letter-perfect will.

15. In many cases, it is wise to rewrite the will. This is usually preferred by a lawyer, since then there is no question as to your latest wishes. The preparation of a new valid will usually revokes the earlier will, but it is wise to destroy the old will when the new one is made. If a person destroys one will without making a new one and he dies, he will have died intestate (without a will) and his estate will be subject to disposition according to the state inheritance laws.

16. Keep your will up-to-date. A will that may be just at the time of its making may be very unjust a few years later.
What Does a Will Contain?

There are five major sections to a will.

The opening recitation tells who you are, where you live, may say that you are of sound mind and competent to make a will (though saying it does not prove it is so), may revoke all previous wills, direct that all just debts and funeral expenses be paid, and give instructions as to burial. However, this latter feature is better done in a separate letter of instruction rather than in a will, since the will may not be opened until after the funeral. A typical introductory phrase: “IN THE NAME OF GOD, AMEN. I, Robert D. Leiter, of the city of Portland, County of Multnomah and State of Oregon, being of sound mind and memory, but also aware of the uncertainties of this life, do hereby make, publish and declare this to be my Last Will and Testament. I hereby revoke all wills and codicils made by me at any time heretofore.”

The dispositive clauses are the heart of the will. They indicate who is to get what.

The administrative clauses set up the machinery for carrying out all your instructions. Here you name your postmortem agents—your executors (and guardians if you have any minor children).

The testamonium clause ends the will and says that, in approval of the foregoing, you are signing your name. Do not sign your name, however, until the witnesses are present. The testamonium clause is likely to read: “IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of January, 1963.”

The attestation clause is the clause for witnesses, so that a record will exist reciting the circumstances under which the signing of the will was witnessed and by whom. Remember that they must hear you announce that this is your will, see you sign it, and then sign in your presence. It is also desirable, although not necessary, to have them sign in the presence of each other. However, a will need not be long. Lawyers have sample forms available. But many good wills do not use the standard forms provided for such purposes. Well-known Americans have drawn wills in only one or two sentences.

The Role of the Executor

The executor named in the will can be either an individual or a trust company. The executor must be a resident of Oregon. If the estate is small and is being left to an adult, such as a wife, who is capable of taking care of the simple details in connection with the administration of the property, it would simplify matters and save expense to appoint this beneficiary the executor (or executrix) of the will. It is advisable to specify in the will that no bond is required.

If considerable property or a going business is left by the testator, it might be advisable to appoint a trusted business associate or the family lawyer as the executor. It is advisable to get the consent of the individual before naming him the executor. Provision should also be made in the will for the appointment of another executor in the
event that the one named refuses to serve or dies. In the event that none is named, or the individual specified does not accept, the probate court will appoint an administrator for the estate. If the estate is large, it might be advisable to appoint both the beneficiary and a lawyer as the executors of the will.

An increasing number of people in recent years have made a trust company or trust department of a bank the executor. Due to its permanency of life, the trust company will probably be in existence to carry out the terms of the will. It is experienced in this kind of work and is equipped to safeguard the assets of the estate. One of the disadvantages of having a trust company act as executor is that it probably would not take the same personal interest that a friend might take.

Do not think of awarding the title of “executor” to someone as an honor and a favor. The executor has many duties and responsibilities which certainly take the job out of this category. One trust company put out a pamphlet entitled “How (Not) to Give a White Elephant.” The story followed that there was once a rajah who punished all those who earned his disfavor by giving them a “sacred” white elephant. Refusal was out of the question; working the dedicated beast was taboo. The eating habits of elephants being what they are, these ponderous, idle pachyderms eventually ate the recipients out of house and home. This, of course, was the potentate’s plan. And so it is that Webster’s dictionary describes a white elephant as “something requiring much care and expense and yielding little profit; any burdensome possession.” The trust company went on to say that high on the list of modern day white elephants is the job of executor, when it is bestowed on an inexperienced person. The path that today’s executor must follow winds through a veritable jungle of laws and regulations if the estate is very complicated or involved.

Just briefly, the executor does the following things:

- Locates and reads the will.
- Takes steps to safeguard assets.
- Probates the will.
- Assembles the estate property.
- Has appraisals made.
- Manages assets.
- Sets claims and debts.
- Sets taxes.
- Accounts to the court and distributes the net estate.

Each of these, of course, carries many sub-responsibilities which lack of space prevents describing in detail here.

Executors are paid for such services; fees are set by law. Both experienced and inexperienced executors are entitled to the same fee. However, sometimes the fee is not accepted if the responsibility is taken by a relative or a close friend. At the same time these persons may either spend an excessive amount of time at the job or perform it inadequately. For this reason, men who appoint their wives as executrix may wish to name their lawyer as co-executor in order to take adequate care of such involved matters as probating the will, settling the estate, meeting claims, providing for estate taxes, and filing an accounting with the court.

Oregon laws provide for the following fee schedule:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $1,000</td>
<td>7%</td>
</tr>
<tr>
<td>Next $9,000</td>
<td>4%</td>
</tr>
<tr>
<td>Next $40,000</td>
<td>3%</td>
</tr>
<tr>
<td>All over $50,000</td>
<td>2%</td>
</tr>
</tbody>
</table>

To give you some idea of costs,
these fees would amount to $1,630 on a $50,000 estate. The fee is based only on the part of the estate which goes through probate. It does not apply to joint ownership or life insurance.

Choose your executors carefully—

**Probate Procedure**

Frequently people feel that probate is something to be avoided at any cost. When we realize the meaning of probate and what it is, we learn that it has important and valuable functions. Probate is a court proceeding with three major functions: (1) To settle claims of creditors; (2) To settle tax problems; and (3) To pass title to anything where title remains in the name of the decedent.

The necessity for probate does not depend on the execution of a will. An estate is subject to probate if a decedent dies owning property in his own name. The phrase *probate proceedings* is used loosely to refer to proceedings in court for closing of all estates. Strictly speaking, however, a proceeding involving a will is referred to as *probate of will* and the manager of the estate named in the will is called an *executor*. Where there is no will, the proceeding is technically an administration and the person named by the court to settle the estate is an administrator.

Why must your estate go through court? In order to protect your creditors and your beneficiaries. Court proceedings allow both time to prove their claims. To take effect, a will has to be probated under the direction of the county court in the county where the testator had legal residence. Some Oregon counties specify the circuit court or district court instead. The executor represents the deceased in the court. The witnesses and the executor prove, by legal process, the genuineness of the will and vouch that the testament presented is the last will of the decedent. Until a will is probated it has no legal effect.

The proceeding involved in settling an estate consists of many steps, and some are briefly described here. It is started by petition to the court. This may be done by the executor or anyone interested in the estate. There must be a hearing for appointment or approval of the administrator or executor.

Notice is given to creditors through newspapers once a week for four consecutive weeks. Creditors have a period of six months to present bills. They must use a standard claim form, attach a copy of the bill to it, and have it notarized. A hearing is then held on claims.

There must be hearings on whether or not the will should be allowed and to establish who are heirs. Witnesses who signed the original will are called to verify the witnessing of the signature of the deceased. If the witnesses are not living, it is necessary to get identification and affidavit of signatures—usually through a bank.

Finally, there is a hearing on the administrator's or executor's final accounting and final closing of the estate.

All of this takes time—in Oregon, the minimum period is eight to nine months. This is not due to slowness of
the attorney or judge or executor, but rather to the fact that six months must be allowed for creditors to file claims before final proceedings. If complications arise or the taxable estate is in excess of $60,000, the period may run from one to two years or longer. The longer period is required to file the federal estate tax return and to obtain releases from the taxing authorities.

Property Owned and Wills Made in Other States

Personal property is distributed according to the laws of the state in which you reside and real property according to the laws of the state in which the property is located. A will in Oregon can pass real property in any state if it complies with the law in the state in which the property is located. If some of your real property is located outside Oregon, the lawyer should be sure your Oregon will is drawn in such a way that it complies with the laws in the other state. A rather common difference between states is in the number of witnesses required to the will. Some require three.

Wills are ambulatory—meaning that they "amble along" with you when you move. But their validity is determined by where you live. If you have moved to Oregon from another state and have not drawn a will in Oregon, it is well for you to check with a lawyer in this state to see if your previous will meets Oregon laws. Even if it does in most respects, it is possible that the executor you have named is not living in Oregon. Since Oregon law requires that the executor be an Oregon resident, you would want to have legal help to correct the matter. Otherwise, on your death the court would appoint an administrator.

Note that if the estate includes real property in more than one state, at time of death, ancillary (auxiliary) probate will be held in each state where property is located. This is necessary to pass title under the laws of each state.

Also remember that laws of descent vary in different states. If a person dies without a will, his real estate in one state may go to one set of heirs, and to another set in another state.

Revoking a Will

A will is revoked (annulled) in several ways:

- When the testator destroys, burns, or tears the executed copy of the will, or crosses out the provisions of the will with the intention to revoke it.
- By the execution of a later will which expressly declares the prior will revoked. Also, the law provides that the document need not be a will, but it must be executed with the formalities required for a will and must indicate that the person executing the document intends to have it as a revoking instrument.
- By marriage or divorce of the person making the will.

Note: Wills are made invalid in many ways which have been discussed in various parts of this bulletin.
Letter of Last Instructions

You should give your executor or your lawyer a letter of last instructions, which is separate and apart from your will. This letter, to be opened upon your death, should include the following:

1. A statement as to where your will may be found.

2. Instructions as to funeral and burial. You may wish to specify for example, that, as a veteran, you be buried in a certain national cemetery rather than in the family burial plot. Or, if you have no family burial plot, exercising your veteran's right to burial in a national cemetery may save your estate some expense. You may have other personal wishes to include about your funeral and burial.

3. Location of your birth or baptismal certificate, social security card, marriage or divorce certificate, naturalization and citizenship papers, and discharge papers from the armed forces.

4. Location of your membership certificates in any lodges or fraternal organizations which provide death or cemetery benefits.

5. A list of the locations of any safe deposit boxes you may have and where the keys may be found.

6. A list of your insurance policies and where they may be found.

7. A statement concerning any pension systems to which you belong and from which your estate may be entitled to receive a death benefit.

8. A list of all bank accounts, checking and savings, and their locations.

9. A list of all stocks and bonds you own and where they may be found.

10. A statement of all real property owned by you.

11. A list of all other property—personal, business, etc.

12. Instructions and directions concerning your business in the event your will suggests or provides that it be continued.

13. A statement of reasons for actions taken in your will, such as disinheritances. It is sometimes better to place the explanation in a separate letter available to the court, rather than in your will, to avoid a complicated will and expensive litigation.

14. A list of the names of various advisers, their addresses and telephone numbers. Such advisers would include, among others, the executor of the estate, the lawyer who will represent it, the life insurance underwriter, the accountant, and the investment counselor.

15. Your father's name and your mother's maiden name. These will be asked for on the death certificate and frequently they are not known by all family members.

Such a letter does not substitute for a will or serve as a will, but it eliminates much uncertainty and confusion when death occurs, for it enables the survivors to handle financial affairs in an orderly manner. It will also help you get a clearer picture of your own affairs, as well as remind you to locate papers which are important to you and your family.

The next three pages provide space for recording vital family data. This information does not substitute for a will.
VALUABLE FAMILY RECORDS AND INSTRUCTIONS

This is an inventory of valuable family records of ..........................................

........................................ (name or names) prepared on .................................... (date).

Note: Both husband and wife may record information here, but it is well to in-
dicate clearly the person to whom each bit of information applies.

Will (location):

Birth certificates (names, dates, and location of certificates):

Social Security (names, numbers, and location of cards):

Other retirement or pension plans:

Marriage certificate (location):

Divorce papers (if divorced):

Naturalization and citizenship papers (if not native born):

Armed forces discharge papers (military serial number and location of papers):

Other valuable papers (location and important details):
Safe deposit box (location of box and key):

Checking accounts (location):

Savings accounts (location):

Insurance policies (List policies including name of insured, policy number, amount, company, and beneficiary. Include life insurance, health and accident insurance, and burial insurance.):

Advisers (List names, addresses, and telephone numbers of executor of estate, lawyer, life insurance agent, accountant, investment counselor, etc.):
Name of husband's father:

Maiden name of husband's mother:

Name of wife's father:

Maiden name of wife's mother:

Wife's maiden name:

Property (List property owned; where located; and how title is held. Include real property, stocks and bonds, U. S. Savings Bonds, and other personal property. If listed elsewhere, tell where information may be found.):

Burial instructions and other vital information:
The Language of the Law

A list of some legal words which relate to wills follows:

**ADMINISTRATOR**—The person or institution appointed by the court to administer the estate of a person who dies leaving no will.

**BENEFICIARY**—A person named in a will to receive property.

**BEQUEATH**—The legal word used to apply to the giving of personal property. The gift itself is called a bequest.

**CODICIL**—An addition to a will or a change executed with the same formalities as required in the will itself.

**DECEDENT**—A deceased person.

**DEVISE**—The giving of real estate.

**ESTATE**—All you own—both your real and personal property.

**EXECUTOR**—The person or institution named in the will to pay the debts and distribute the property according to the provisions of the will. When it is a woman, the word executrix is used.

**INTESTATE**—Refers to one who dies without leaving a valid will.

**PERSONAL PROPERTY** — All property which is not real estate.

**PROBATE** — The name of the court which has jurisdiction over wills. The word is also used to apply to the procedure of the court in taking proof of the validity of the will. "Probating a will" means presentation of proof to the court after your death of the legality of your last will and testament, whereupon the court grants authority to the executor to carry out your intentions as expressed in the will.

**REAL PROPERTY**—Real estate. Land and things definitely attached to the land.

**SPOUSE**—Husband or wife.

**STATUTES OF DESCENT**—Laws which govern the disposition of one’s estate if there is no will.

**TESTATE**—A person leaving a valid will is said to have died testate.

**TESTATOR**—A person making a will. When it is a woman the word testatrix is used.

**WILL**—The written instrument, legally executed, by which a person disposes of his property to take effect after his death.

Answers to questions about financial matters at time of death may be found in Oregon Extension Bulletin 809, “When Death Comes.” Oregon residents may request a copy free from county Extension offices or from the Bulletin Room, Industrial Building, Oregon State University, Corvallis.