

# CLIENT NEWSLETTER

A publication of:  
Robert A. Youngberg,  
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at Law, PLLC. Part of  
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important legal  
matters that affect  
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answering your questions about wills

## An Introduction To Wills

By Robert A. Youngberg

While you are alive and healthy, you value being able to make your own decisions about your property and finances. Should you die or become incapacitated, you hope others will handle these matters for you in the way you want.

The only way to ensure this will happen is through estate planning, which involves making personal and financial decisions about your property while you are living and creating legal arrangements to carry out those decisions after you die.

This newsletter looks at one key estate planning tool: a will.

### **What is a will?**

A will is a legally enforceable statement about how you want your property handled after you die. It is a written document in which you state:

- Who will own your property after you die;
- Who will raise your children if you should die while they are still minors and your spouse is unavailable to care for them;
- Whether your beneficiaries receive their inheritance outright or at a later date; and
- Who will serve as your “personal representative” — the person who will pay your bills and taxes and distribute your property to your beneficiaries.

### **Are there different kinds of wills?**

Wills can be of various degrees of complexity and can be used to achieve a wide range of objectives.

If your will distributes your assets outright, it’s often called a “simple will.” If it sets up one or more trusts, it’s often called a “testamentary trust will.” If your will leaves assets to a trust you created during your lifetime, your will is a “pour-over will,” because it “pours” your property “over” into your trust after you die.

### **What can a will do?**

Besides distributing your property to spouse, children, and others, there are a number of other things your will may do.

**This newsletter uses the word “property” throughout. Sometimes people confuse “property” with “land.” However, property, as used here, refers to land, bank accounts, investments, money and personal possessions of every kind.**

- Your will may nominate a guardian for your minor children if the other parent does not survive you.

- Your will may designate a personal representative of your estate, and eliminate the need for a bond in a probate court.

- By careful use of a trust, your will may eliminate the need for supervision by a court of a minor child's estate, and the need for bonds.

- Your will may specify a method and means to provide for a handicapped child or an elderly parent.

- Your will may designate gifts to religious, educational, and other charitable causes.

**When should I write a will?**

If you have accumulated some assets, and you care who will receive those assets after you die, it's time to write a will.

Anyone with minor children definitely should have a will. Your will can name the person you want to serve as their guardian, should something happen to you and your spouse. Discuss this carefully with the prospective guardian, to be sure he or she is up to the job. Also, name an alternate guardian in your will as a backup.



**“A will is a legally enforceable statement about who you want to have your property after your death, and in the manner you choose.”**

On the other hand, if you're a young adult, have no children, and own few possessions, you probably don't need a will yet. If you die, under state law your parents would be entitled to your possessions. However, if you'd rather leave unique pieces of personal property to a close friend or a valuable keepsake to specific relatives, then a simple will is a good idea.

**What types of property will not be covered by my will?**

Your will cannot transfer property that is not part of your “probate estate,” such as certain joint property, life insurance, retirement plans, and employee death benefits, unless they are payable to your estate. For example, if an insurance policy is payable to your estate, it will be governed by your will; otherwise, it will go directly to the beneficiaries you named on the insurance forms.

Properties that are not probate property and cannot be transferred by your will include:

- Survivorship marital property goes directly to your surviving spouse. An example would be a house that has both spouses' names — and only their names — on the title. If you live in California, Arizona or another “community property” state, you may have this kind of property.

- Property that is jointly owned. Such property goes to the surviving owner(s). If you own property with another person as “joint tenants with right of survivorship,” upon your death the property will pass directly to the remaining joint tenant and will not be a part of your probate estate.

- Property held in a trust. The term “trust” describes the holding of property by a trustee for the benefit of one or more persons called beneficiaries. Trust property will transfer to the persons named in your written trust agreement, not your will.

- Life insurance payments and funds in IRAs or other retirement plans and annuities. Such property goes directly to the beneficiaries you listed on the appropriate insurance forms.

- “Transfer on Death” (TOD) and “Payable on Death” (POD) accounts. Such assets go directly to the beneficiaries named on the account forms.

**“If you have some assets, and you care who will receive those assets after you die, it's time to write a will.”**



If all your property falls into the above categories, and you have no minor children, you might think you have no need for a will. You may be right. On the other hand, a will may still be wise.

For example, you and your spouse, the other joint tenant, or your beneficiary could die at the same time, or that person could die before you do.

**What happens if I die without a will?**

If you die *intestate*, that is without a will, the laws of intestate succession will act as your default estate plan. Those laws reflect the state legislature's best judgement about how most people would want their property distributed after they die, which may not suit you. Also, some of the built-in protections in those laws may not be necessary in a harmonious family setting.

**Property That Transfers To Your Beneficiaries Without A Will**

Property Type	How It Transfers to Others
Property owned jointly with your spouse	For example, if you own a home jointly with your spouse, the home will pass directly to your surviving spouse, whether you have a will or not
Other jointly owned property	If you own property with others as "joint tenants with right of survivorship", the property will pass to the surviving owners, whether you have a will or not
Property held in a trust	Trust property will pass to others according to the provisions of the written trust agreement, not your will
Life insurance	Life insurance payments will go to the beneficiaries you name on the appropriate forms
Funds from retirement plans, IRAs, and annuities	As with life insurance payments, these funds will go to the beneficiaries named on the appropriate plan forms
Transfer on Death (TOD) and Payable on Death (POD) accounts	Will go directly to the beneficiaries named on the appropriate account forms

Generally, under Utah's laws, after your death your property will go to your spouse and children, or if none, to other close family members. If you have no

spouse or surviving children or descendants of children when you die, the order of inheritance is generally as follows: parents, brothers and sisters, grandparents, other descendants of your grandparents, and then to any step-children.

Your property goes to the State school fund if you leave no heirs closer than the descendants of your grandparents and you have no step-children.

If you have children from a previous marriage, intestate succession laws will transfer to your current spouse the first \$75,000 of your estate plus one-half of the balance. The remaining one-half goes in equal shares to all of your surviving children, including any from the previous marriage.

A will allows you to alter the state's default plan to suit your personal preferences.



**“If you die ‘intestate’ [without a will], the laws of intestate succession will determine who receives your property.”**

**“To be valid, your will must be in writing, and you must date and sign it. At least two witnesses also must sign it.”**



Also, if you leave behind minor children and have named no guardian in a will, the court must choose and appoint a guardian.

Having a judge decide who will raise your children can be emotionally wrenching for other family members. Avoid the upset and expense by naming a guardian in a will.

Finally, remember that if you have no will, the court will appoint a personal representative to administer your estate. Having a will allows you to choose this person. You can state in your will that the personal representative need not post a bond, thus saving money for your estate.

### **What makes a will valid?**

A will is an important document. Be sure it correctly expresses your wishes and is legally enforceable. Keep in mind that you will not be around to interpret it. To be valid, your will must be in writing, and you must date and

sign it. Two witnesses also must sign.

Witnesses should not be close relatives or people who are mentioned in the will. Many people ask close friends or neighbors to witness their wills.

### **How can I change my will?**

You have two options. You can simply write a new will, which automatically replaces an older one. You can also add a supplement, called a *codicil*, to your existing will. For a codicil to be valid, it must satisfy the same legal requirements as those mentioned for a will.

### **How can someone challenge my will?**

Rarely is a will challenged. When it is, the person challenging it usually attempts to prove in court that:

- You were under duress or undue influence when making your will;
- You were incompetent or unable to understand the results of your will when writing it; or
- Your will does not meet the legal requirements that make it valid, such as a signature, a date, and witnesses.

One way to avoid disputes or misunderstandings about your will is to discuss and share its contents with close family members and other beneficiaries while you are still alive.

### **Where should I keep my will?**

Place your will where it's safe from theft, fire, or other damage. A safe-deposit box is one possibility. You also

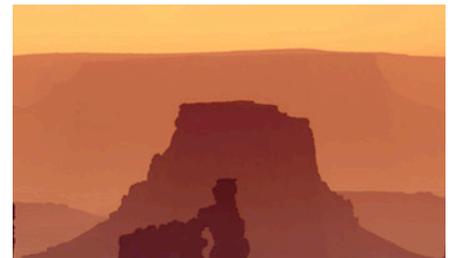
may file it with the district court in your county.

Be sure the person you name as personal representative knows where your will is. This will help avoid any confusion or unnecessary delay in settling your estate.

### **Summary**

A will allows you to continue to control your property even after you die. It tells others who you want to own your property when you are no longer there to speak for yourself. As such, a will helps you accomplish your estate plan objectives while avoiding misunderstandings among your loved ones and friends. □

If you have more questions about wills or estate planning, don't hesitate to call or write Rob Youngberg at the phone number or email address below.



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