



“Why You Need A Will”

By Lesley M. Mehalick, Esquire

Regardless of your net worth, it is important to have a Will in place because it allows you to structure your family’s financial future for after you have passed away. Your Will provides an opportunity for you to best meet your personal family goals; if you die without a Will, which is often referred to as “dying intestate,” many decisions will be made by the Courts and the intestacy laws, and the results may not match, or may even be contrary to your intents.

As an initial matter, your Will directs how and where you would like your assets to pass. It is important to set this out; you should not assume that the intestacy laws necessarily provide for what you would prefer to happen. For example, if you die leaving a surviving spouse, depending on who else survives you, she may not inherit everything. Instead, it is possible that your surviving parents or minor children (including a child with someone other than your spouse) could end up co-owning assets with your spouse, which could present challenges when your spouse needs to sell the asset. Similarly, if you are not married to your partner, and thus would not inherit under the intestacy laws, a Will can insure that your monies will still go to your loved one, instead of to (potentially distant) family members. Additionally, without a Will, unintended results may occur such as having monies pass to estranged family members.

A Will provides you with the opportunity to designate persons whom you trust to perform important functions. In your Will, you name an Executor, who is the person that handles the process of administering your estate. This is a position for someone who is trustworthy and responsible, and by naming an Executor in your Will you can select the best person for the job. In your Will you may choose a Guardian to care for your minor children. You may select a Guardian of the Person, who will make decisions regarding your child’s health, education, and living situation, and a different Guardian of the Estate, who will manage any property your child may have. A Will also allows you to select a Trustee to manage the property in any Trust contained in your Will.

A Will allows you to set up a Trust or Trusts on behalf of your loved ones. While a Trust may seem like an unfamiliar concept, it is just a mechanism whereby property is held, managed, and distributed for the benefit of another. Trusts can serve many crucial functions, such as protecting minor children or a disabled relative.

McAndrews Law Offices, P.C.

30 Cassatt Avenue
Berwyn, PA 19312
Phone: (610) 648-9300
FAX: (610) 648-0433

Wyomissing, PA ● Phone: (610) 374-9900
Harrisburg, PA ● Phone: (717) 221-1422
Scranton, PA ● Phone: (570) 969-1817

A common trust in a Will is a Minor's Trust. If you have a minor child and you die without a Will, when your child turns eighteen, he will inherit any monies to which he is entitled outright, regardless of whether he is fiscally responsible enough to hold a sum of money. A Will can set up a Trust for the benefit of your minor child, and you may direct the length of time that your child's share will remain in the Trust. Thus, you can allow your child's share to be held in Trust until he or she has reached a more mature age, such as age twenty-five or thirty. In such a case, before the child reaches age the designated age (such as twenty-five or thirty), the money in the Trust can be used for the child's health, education, support, and maintenance.

A Will with a Special Needs Trust is vital in situations where a disabled family member is eligible for essential public benefits, such as Medical Assistance and Supplemental Security Income. These benefits may be a disabled person's only source of income and health insurance. If a person is eligible for such benefits, inheriting monies over \$2,000.00 may disqualify him. A Will can set up a Special Needs Trust that will allow the disabled person to continue receiving public benefits while also allowing the inherited monies to be used to increase his quality of life.

A Will can also contain a myriad of other Trusts designed to meet specific needs. For example, your Will can contain a Trust designed to reduce or eliminate the Federal Estate Tax. Additionally, a Will can contain a Trust that provides for your surviving spouse during her life, and upon her passing, provides for your children from a former marriage. In this way, Trusts can be used to meet your personal needs and goals.

In these ways, a Will allows you to set forth your intentions and to plan for your family's future, and with careful planning and drafting, your Will can achieve your personal family goals.

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