

F. Y. I.

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Law Offices of Irene C. Olszewski, LLC

Client-Focused
Legal Solutions

Law Offices of Irene C. Olszewski, LLC

21 East Middle Turnpike
Manchester, Connecticut 06042

Phone: (860) 432-7293

Fax: (860) 432-7294

Email: irenelaw1@aol.com

Website:

<http://www.ireneolszewski.com>

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Common Questions Regarding Wills



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WHAT IS A WILL?

A Will is a document meeting certain formal requirements by which an individual may provide for the disposition of his or her property after death.

WHO MAY MAKE A WILL?

In Connecticut, anyone who is at least 18 years of age and of sound mind can make a Will.

HOW IS A WILL MADE?

Because a Will is such an important document, certain formalities must be observed in the preparation and signing of a valid Will. Only a document which satisfies *all* of the requirements imposed by law can be treated as an effective Will:

1. A Will executed in Connecticut must be in writing.
2. It must be subscribed (signed) by the person making the Will.
3. It must be attested by at least two witnesses who must subscribe in the presence of the person making the Will.

IS A LAWYER NECESSARY?

Like other professionals, lawyers have the training, knowledge and experience necessary to make informed judgments and insure that each individual client's objectives and family situation are taken into account. The drafting of a Will is an important job that should be done professionally. No untrained person should attempt to write his or her own Will: the price of failure can be too great.

HOW LONG IS A WILL GOOD FOR?

A properly drawn and executed Will remains in effect until it is revoked. A subsequent marriage, divorce or dissolution of marriage, birth, or adoption of a minor child will revoke a Will unless a provision is made to cover such an occurrence. Of course, an individual can revoke his or her Will at any time.

CAN A WILL BE CHANGED?

A Will can be changed or added to at any time provided all the formal requirements are observed. A Will *should* be changed whenever it no longer meets an individual's needs for any reason, including a change in family circumstances or change in assets, and should be reviewed periodically also on

account of changes in the law.

DOES A WILL INCREASE PROBATE EXPENSES AND TAXES?

Probate Court fees are based on the size of an estate, not on whether or not there is a Will. Property owned by a decedent is subject to probate court jurisdiction whether or not there is a Will. A carefully drawn Will often results in a tax savings and may also result in the reduction of administration expenses such as bond payments.

IS JOINTLY OWNED PROPERTY A SUBSTITUTE FOR A WILL?

When most people refer to jointly owned property they mean property held by two or more people, usually a husband and wife, as joint tenants with right of survivorship. Under this arrangement, when one of the joint owners dies, title to the property automatically passes to the survivor. While this arrangement may be a useful device in some circumstances, it should not be considered a substitute for a Will. Joint ownership is a rigid arrangement: it often cannot be changed without legal or tax problems or altered as the family situation changes. In addition, while joint ownership may remove a particular asset from the probate estate, it does not avoid estate or succession taxes. Even when joint ownership is used, only a Will can give the flexibility to provide for special needs, deal with unusual circumstances, and insure that there is no unnecessary shrinkage of assets.

WHAT HAPPENS WHEN THERE IS NO WILL?

With a Will an individual directs the distribution of his or her property after death. With the limited exception of a surviving spouse being able to elect to receive a specific share prescribed by law, a person may, by Will, provide for any distribution he or she desires. When there is no Will, the law establishes how a person's estate will be distributed, and the distribution imposed by law cannot and does not take into account the individual's particular desires or the special circumstances which may exist in his or her family.

This could result in an individual's estate being distributed in a way he or she did not foresee, would not have wanted and would never have directed in a Will. To give one example, a man with a wife and

small child might assume that if he died, everything he owned would go to his wife; yet depending on the size of his estate, his wife might receive only a little more than one-half.

With a Will an individual can provide for the unique needs of his or her family, needs that he or she knows of first hand, but which the rigid formula of distribution set by law cannot consider, perhaps a child who needs special care or an aging parent. There are many ways of meeting these needs through a carefully drawn Will, but when there is no Will there is no flexibility.

ADMINISTRATION

With a Will an individual can select the Executor who will be entrusted with settling his or her estate and carrying out the particular distribution called for in the Will. The Executor chosen is often a family member or trusted advisor. When there is no Will the Probate Court will appoint someone to administer the estate and carry out the mandated distribution. Once again, the individual has no choice and it can increase costs.

With a Will, particularly when the Will is drafted in conjunction with a well thought out overall estate plan, a person can, in addition to meeting the needs of his or her family, take advantage of the many ways to reduce, or even eliminate, taxes and other expenses and thus avoid unnecessary shrinkage of the estate. When there is no Will these opportunities to preserve assets are lost. With a Will the surviving parent of a minor child may appoint a guardian of the child, a guardian in whom the parent has confidence and trust. When there is no Will, the Probate Court will act alone to appoint a guardian.

CONCLUSION

The preparation of a Will, with particular consideration and understanding of the future needs of dependents, might be looked upon as an obligation on the part of individuals concerned with the welfare and peace of mind of the immediate family, close friends and relatives.

This brochure is for informational purposes only. It is not intended to be and should not be construed as legal advice. All legal questions should be addressed to a licensed attorney.