

**PROBATE 101:
TEN GOOD REASONS YOU NEED A WILL
(EVEN THOUGH YOU THINK YOU DON'T)**

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In the legal world of estate planning and probate, I often hear lawyers say there are two ways that a person can die: testate or intestate. That is, with a Will or without a Will. If you die with a Last Will and Testament, you die testate. If you die without a Last Will and Testament, you die intestate.

You may be married and own everything jointly with my spouse and think that you don't need a Will. Or you may be single and want everything to pass to all of your children equally. Whatever your situation, married, single, divorced, young, or old, it's better to have a Will than not have a Will. You may need a Will for a number of reasons or for one very important reason. Whatever your needs, I can tell you that if you die without a Will, just by the very nature of probate administration, your estate will be more complicated, more time-consuming and more uncertain than if die with a Will.

Here are ten good reasons why you need a Will:

1. **You choose who gets your property.** By far, this is the most important reason that you should have a Will. If you die without a Will, state law controls who will receive your property and how much they will receive. Most people don't realize that if they die without a Will and have a surviving spouse and children, the spouse only receives one-half of their probate property. The children share the other half. Since most people want to leave everything to their surviving spouse, if you don't have a Will your spouse may very well end up owning your home with your children.

2. **You choose who's going to be in charge of your estate.** Again, if you die without a Will, state law will control who will handle your estate. Although state law gives a surviving spouse the right to handle a deceased spouse's estate, if there is no spouse and more than one child, all of the children have an equal right to be in charge. If they can't agree on who is going to handle things, a court proceeding may be necessary to settle the dispute.

3. **You choose how much of your estate each of your children (or other beneficiaries) will receive.** You may have a child that has special needs, has a disability, or has trouble handling money. You can protect such a child and make special provisions for them in your Will through a trust. Or, you may have a child that you are estranged from or are unhappy with that you don't want to

receive any of your property. Without a Will, all of your natural and adopted children share your estate equally, whether disabled, estranged, wealthy or needy.

4. **You can name a legal guardian for minor or disabled children.** If you have minor or disabled children, you should indicate your preference concerning who will be the legal guardian of your children in the event both you and your spouse die. If the person you choose is fit and proper and no other family member objects, your choice will most likely be given custody by the family court.

5. **If you own real estate that needs to be sold, you can give your representative the authority to sell.** If you die without a Will, your personal representative must file a Summons and Petition with the Probate Court, give notice to all interested persons and obtain an order from the Probate Court in order to sell your home or any other real estate. The power to sell real estate is routinely included in most Wills.

6. **You can eliminate a complicated court proceeding often necessary for the appointment of a conservator for a minor beneficiary by naming in your Will who's going to handle any property for a minor beneficiary.** You may have minor children or minor grandchildren who will or might inherit some of your property. Since the law presumes that minor children cannot manage their property, someone must be appointed by the Probate Court to manage the property of minor children if they inherit from your estate. With a Will, you can name the person you want to manage your minor beneficiaries' property and eliminate a costly, time-consuming court proceeding that would otherwise be necessary.

7. **You can hold property for a child beyond age 18 or give a child a right to receive certain property without actually giving them the property outright.** Most parents can't imagine giving a child a substantial sum of money, such as \$10,000, \$50,000 or more, on their 18th birthday. If you have a child or grandchild who inherits from you and you do not make provision in a Will (or trust) for the money or property to be managed beyond 18, they will, by law, receive all of their inheritance at 18 and can then do with it what they choose. You can provide in your Will for the property to be held in trust for their benefit and have it distributed or sprinkled out to them at different times as they mature and can appreciate and manage it for their own benefit.

8. **Without a Will or the agreement of all of your heirs, the Personal Representative of your estate will have to post a bond.** You can waive the posting of a bond in your Will and, in most cases, a bond will not be required. Otherwise, all of your heirs must agree in writing to waive the bond. If they don't, then your representative will be required to post a fiduciary bond.

9. **A Will often eliminates the need for formal hearings in the Probate Court.** Many of the foregoing items are often included even in simple Wills. The inclusion of these provisions will in many instances eliminate the need

for formal hearings in the Probate Court. Any time a hearing is required in the Court, more time and expense is required to administer the estate. Even if all of the family is in agreement and gets along well, having a Will that contains some of these routine, standard provisions will eliminate procedural matters that oftentimes require additional paperwork.

10. **A Will is your last statement to your family and friends.** That's why it's called a *Last* Will and Testament. It tells the world what you want, don't want, intend and desire, and it will do these things for you when you are not here to do them yourself. Let it be a statement of your last desires and wishes, and let it do so in a straightforward, clear, unambiguous, and legally enforceable manner. Remember the old saying, "You get what you pay for?" Invest in a good Will prepared by a licensed attorney experienced in estate planning.

There are many reasons that a person may need a Will. It may be that a lot of these reasons apply to your situation or that only one or two apply. Whatever your needs, any one of them is reason enough for you to die "testate" with a Will. *(The information provided in this article is for informational purposes only and is of a general nature. The information should not be construed as legal advice. If you have any questions about the subject matter of this article or related matters, you should consult with a professional advisor for advice. The Horry County Probate Court is located in the Horry County Government and Judicial Center, 1301 2nd Avenue, Conway, South Carolina. The telephone number for Judge Edmonds and the Court is (843) 915-5370. Office Hours are 8:00 A.M. to 5:00 P.M. The Horry County Probate Court also has a satellite office located in Little River at the Ralph Ellis Building, 107 Highway 57 North, Little River, South Carolina 29566. The telephone number is (843) 915-5372. Hours are 8:00 A.M. to 12:30, 1:30 P.M. to 5:00 P.M., Tuesday until 4:00 P.M.)*