

# Advantages of a Will

## *Avoids Distribution Under the Law of Intestacy*

The state intestacy law will pass property to certain relatives of the decedent. These laws have been drafted to be fair in the average situation, but most persons would like to choose who will receive their estate when they die.



## *Permits the Nomination of a Guardian for Minor Children*

Without a nomination in a will, the court will appoint a guardian of the person for minor children. Relatives are not always the best choice for a guardian and consideration must be given to the financial situation of the potential guardian, as well as his or her health, age, willingness and ability to care for your children.

## *Waiver of the Probate Bond*

In the absence of a will, the court will require a fiduciary bond to be posted by the administrator (executor) of the estate to guarantee the replacement of any funds embezzled or diverted by him. Since this additional cost must be borne by the estate, the estate owner may want to waive the bond requirement in the will. Great care should be used in selecting an executor.

## *Choosing the Executor*

The duties of the executor of an estate can be very time consuming and frustrating, especially to a spouse who has just lost his or her mate. In the will, a qualified individual and/or a corporate trust company can be chosen to handle these responsibilities.

## *Making Specific Bequests to Individuals*

An individual may bequeath specific items of jewelry, heirlooms and furniture, or make cash bequests, and be certain that they will pass to the proper persons. Without a will, written or oral instructions may not be followed.

## *Sale of Assets During the Administration of Probate*

Additional expense to the estate can generally be avoided by permitting the sale of assets without the executor having to publish a notice of sale in the newspaper. A sale of assets may be necessary in order to pay death taxes and expenses of probate.

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## Authorizing the Continuation of a Business

Unless the will authorizes the continuation of a business, the executor must operate it at his or her own risk. Many executors may elect not to administer the estate unless this risk is borne by the estate.

## Deferring Distributions to Minors

When parents die leaving minor children, each child's share of the estate must be held in a guardianship account until he or she attains the age of 18 (or 21), at which time the entire remaining share is distributed outright. Trust provisions can be placed in the will to defer these distributions until a more mature age.

## Tax Savings

Certain, substantial tax savings are possible through the use of trusts. The will can be used to create trusts after death. Such trusts are known as testamentary credit shelter trusts. Similar tax savings, as well as probate savings, can be achieved through the use of trusts established during life, known as living credit shelter trusts.<sup>1</sup>



## Peace of Mind

Although this advantage cannot be measured in dollars and cents, when the estate is in order an emotional load is lifted from the person who is concerned for his or her family's well being.

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<sup>1</sup> Under the Tax Act of 2001, the federal estate tax is gradually phased out until its final repeal in the year 2010. If Congress does not act at that time to repeal it for the years following, it will automatically revert back to the rates in effect during the year 2001, with an exemption for the first \$1,000,000 of assets.