

A will is a formally executed written document which directs how your property will be distributed after your death. A will is usually a key element of an estate plan.

If you do not prepare a will, your estate will pass to a list of people determined by law. It is a myth that your property will go to the state if you do not have a will. The law will look long and hard to find a relative to inherit your property, even if you do not have a will. Generally, by default your property passes to your spouse and/or children.

Having a will allows you to choose how your property passes. For example, if you are single and you do not want your children to inherit in equal shares, it is essential that you have a will. Further, if you want your property to pass to someone to whom you are not related, it is also essential that you have a will.

You gain additional benefits by having a will. In your will, you name the personal representative (in some states called an executor), who will be responsible for distributing your assets. This allows you to choose the most fair and level-headed person to distribute the assets in what certainly will be a stressful time.

Some people think that having a will avoids probate. This is not true. Probate is a process in which a court supervises distribution of your assets. Probate is independent of having a will; some estates without a will must be probated, some estates with a will may not need probating depending on the

circumstances.

Another common misconception is that having a power of attorney substitutes for having a will. This is incorrect. A power of attorney is a lifetime document. It allows you to designate someone to speak for you about health care or financial decisions if you cannot speak for yourself. ***However, a power of attorney terminates upon your death.*** If you want to direct how your property will be distributed after you die, you should have a will.

New Mexico law has strict requirements for witnessing a will, and choosing legally effective language is sometimes tricky. Holographic wills, hand written by the testator and not properly witnessed and signed, are not valid in New Mexico. Some attorneys will draft a will for a nominal fee. A more complex estate plan, of course, costs more. Because of the low cost of having your estate planned correctly and the high risk of error if you do not seek legal help, it is best to have an attorney draft your will.

Most New Mexico wills allow use of an optional list of tangible personal property. This is a list you can take home and complete, directing how items around the house are distributed on your death. You can use the list for “touchable” things, like jewelry, artwork, furniture, heirlooms, tools and firearms. However, the list can never be used to distribute cash, bank accounts, real property, or vehicles requiring documents of title. These must be distributed in the main part of the will. The benefit of having a list of tangible

personal property is that you can change it at any time without the help of an attorney.

Although you can change the list of tangible personal property at any time, you cannot change the body of the will without going through a formal revision with the help of your attorney. Sometimes, people get angry at a child or friend and simply cross that person’s name off the will. Crossing out the name on a will has no effect; the property still passes according to language of the will on the day it was executed. To revise a will you should prepare either a new will or a codicil, which must be executed with the same formality (including two witnesses) as the original will. You should always seek legal assistance when you want to change the body of your will.

People with older wills sometimes ask if it is a good idea to adopt a new will. A 30-year-old will can still be effective, as long as it was drafted and executed properly and you still desire the terms of the old will. However, it is a good idea to review your will every time there is a birth or a death in the family, and at least every seven years.

A will is only one part of an estate plan. For a simple estate (generally one of less than \$500,000), you should also learn about beneficiary designations, joint ownership of property, powers of attorney and transfer on death deeds. People with larger estates or special circumstances might also want to consider a living trust. Trusts are beneficial because they typically avoid probate and give some control over what happens to your

property after your death. However, absent special circumstances, trusts are often unnecessary for a simple estate.

The most conservative answer is that a will is still a good idea. For example, a widow living in an apartment who owns a car, furniture and a \$30,000 CD payable on death to her daughter might ask if she should have a will. The client could still benefit from a will. First, the woman could inherit money or win a lottery before her death. The will allows her to designate how it would pass. Additionally, many New Mexico attorneys draft wills with a specific bequest of an automobile. The Motor Vehicle Division will transfer the vehicle to the person named in the will without probate if the heir provides the original will and an original certificate of death. Additionally, the woman can use the tangible personal property list to leave mementoes of jewelry and household furniture to her neighbors and friends. Although it is highly unlikely the will would ever need to be probated, the will would still benefit this woman.

An additional benefit of seeing an attorney for a will is that the attorney will likely counsel you about planning your estate. The attorney should discuss whether you can use a transfer on death deed to designate who will own real property after your death without probate. Many attorneys help you to draft a power of attorney and provide an optional cremation authorization form as part of a packet along with the will.

Further, most attorneys provide information about naming beneficiaries for your insurance, bank and investment accounts, as well as talking about the risks and benefits of joint ownership.

In conclusion, a will directs how your property is distributed after your death. The will gives you control in selecting a personal representative and includes terms which assist in the orderly distribution of your estate. A will must be executed with certain formalities and should contain certain legal terms. For this reason, it is best to see an attorney for assistance in planning your estate. Even if you have a simple estate, it is a good idea to have a will.

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## SHOULD I HAVE A WILL?



