

Houston Intown
March 2004

Legally Speaking

Till Death Do Us Part

As an attorney and CPA, one of the most frequent questions I am asked is, "do I need a Will?" The answer is an emphatic, "yes!" Yet, despite its importance, it is estimated that seven out of ten Americans die without a valid Will. Unfortunately these individuals have left the disposition of their estates to the provisions of the state's intestacy laws. In addition, a court-appointed administrator will handle the estates of these individuals unless other means are used to obtain an independent administration. In many cases, the estate will be subject to unnecessary taxes and administration expenses.

Think of a Will as the centerpiece of your estate plan. A properly drafted Will cannot only help avoid unnecessary estate taxes, it can be designed to accomplish most goals including:

- **Direct the disposition of the client's probate assets.** So you want to leave your grandmother's pearls to your daughter? A Will states your desires and intentions as to who will receive the probate assets (e.g. charitable organization, relative or non-relative), how these assets will be distributed (e.g. outright or in trust) and when such assets will be distributed (e.g. immediately or at some time in the future). You may also specify that an individual is to receive no assets under the Will. You will need to distribute all your assets, however, to avoid the risk of a partial intestate estate.
- **Appoint an Independent Executor and successor Independent Executor.** This is an important job! The Executor's responsibilities include probating the Will, collecting all estate assets, paying all expenses and taxes of the estate, and distributing the assets of the estate in accordance with the Will. Unlike most states, Texas allows for an independent administration, which simply means that the Independent Executor can act on behalf of the estate independently of court control, except for the probating of the Will and filing an inventory. The importance of appointing a successor Independent Executor is that an independent administration will last only as long as an Independent Executor or a successor Independent Executor named in the Will is serving in such capacity. Under Texas law, there is presumption in favor of a dependent administration, unless, other means are used to apply for and obtain an independent administration. You may appoint more than one person to serve as Co-Executors of your estate.
- **Nominate the guardian of minor children of the testator.** If you have children under the age of 18, you can appoint a person to act as Guardian to take care of your minor children and manage their estates. You should also appoint

successor Guardians in case the person appointed is unable to serve in such capacity. Only one person at a time may be Guardian, but you may also appoint a married couple to act as Co-Guardians.

- **Create a Contingent Trust.** This type of trust is used to hold property for minor children and/or incapacitated persons. This trust will, in essence, prevent a guardianship proceeding where a Guardian will be appointed by the court over the estate of the minor child or incapacitated person.

Young or old, single or married, with or without children, a Will can make known your desires and intentions for your estate, large or small.

Although a Will is the centerpiece of an estate plan, there are other documents that are equally as important. Look for future columns that address these documents and other estate issues.

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This Article should NOT be taken as legal, tax, or financial planning advice for your own particular situation. Instead, you should consult with a qualified professional to seek such advice.

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