

Steps To Design My Will

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My name is Kendall Brown. As an attorney, I have practiced in the estate planning area for over 40 years. When I meet with my clients to discuss estate planning, one major item we discuss is the steps necessary to design their Will. The purpose of this tutorial is to discuss those steps with you.

Steps To Design My Will

- Gather information regarding you and your family
- Make decisions regarding your Will
 - Who is to receive certain assets or specific amounts
 - Who is to receive your remaining assets
 - Who are to serve as your Executor and Guardian

There are several steps to design a Will. First, it is necessary to gather information regarding you and your family. Second, you need to make various decisions regarding your Will. These include who is to receive certain assets or specific amounts, who is to receive your remaining assets and when they are to receive them. Third, you need to decide who is to serve as your Executor. If you have minor children, you need to decide who is to serve as Guardian for those children.

Gather Information Regarding You And Your Family

- Your legal name and address
- Your spouse's legal name
- Your children's legal names and addresses

The information you must gather regarding you and your family is fairly easy. First, we must know your legal name and your address, including the county of your residence. Second, if you have a spouse, we need to know the same information for your spouse. Finally, we need to know the legal names of your children as well as their addresses.

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Who Is To Receive Certain Specific Assets Or Amounts

- Who is to receive your home
 - Your spouse and/or children
 - Who if your spouse does not survive you
 - Home can pass with remaining assets
- Who is to receive your personal property
 - Your spouse and/or children
 - Personal property can pass with remaining assets
 - In accordance with a written list

The next step in designing your Will is to determine who is to receive certain assets. One asset to consider is your home. The recipient of your home can be your spouse. However, you need to plan for the possibility that your spouse may not survive you or, perhaps, you don't have a spouse. Your home can pass with the remaining assets and does not have to go to a specific person or group of people. Another area that is generally considered is what happens to your personal property such as furniture, jewelry, etc. Again, generally your spouse and/or your children will receive that personal property. Personal property can also pass with your other assets. You may choose to specify that the personal property passes in accordance with a written list. The written list does not have to be part of your Will but your Will refers to this written list. The list is a convenient and flexible document that you prepare and can be changed at any time. It is signed by you but does not need to be witnessed or notarized.

Who Is To Receive Certain Assets Or Specific Amounts

- Are certain assets or specific amounts to go to others
 - Certain assets, dollar amounts, percent of estate
 - Individual, charities
 - Must other survive you or will go to his/her heirs

In addition to your home and personal property you may also want certain assets to go to specific people. You may want a specific amount to pass to someone. Often people will want to have a specific amount pass to a charity or educational institution. If certain assets or specific amounts are to go to individuals, your Will should specify whether those individuals must survive you to receive those assets or whether those assets will pass to his or her heirs.

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Who Is To Receive Your Remaining Assets

- What your spouse is to receive
 - Your entire estate
 - Optimum marital deduction amount
 - Percent or dollar amount of estate
 - Combination of above – greater/lesser
 - Nothing

If you have a spouse, the next step is to decide what you will leave to your spouse. Typical amounts would include your entire estate or an optimum marital deduction (which is everything over \$3.5 million at this time.) Your spouse could also receive a percentage or dollar amount of your estate. Of course, your spouse does not have to receive anything from your estate if he or she doesn't need it.

How Should Your Spouse Receive Your Assets

- Should your spouse receive assets
 - Outright
 - In a Marital or QTIP trust
 - Who is to receive the assets after your spouse's death
 - Who is to be the Trustee

In addition to determining how much your spouse should receive, you also have to determine whether your spouse receives the assets outright or whether they should be held for your spouse's benefit in a Marital or a QTIP Trust. A QTIP Trust is a specific type of marital trust which provides that all income is paid to your spouse during his or her lifetime. He or she may receive principal as well. A QTIP Trust specifies where assets will pass after your spouse's death. This is usually a Family Trust or your children. A Marital Trust is similar except your spouse determines where the trust goes after his or her death. If you use a Marital or QTIP Trust you need to determine who is the Trustee of that Trust. The Trustee can be your spouse, a bank, another family member or a trusted individual.

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Who Is To Receive Your Remaining Assets

- Who is to receive your remaining assets
 - If spouse does not survive you
 - Children and/or other beneficiaries
 - Outright or in a Family Trust

After determining how much property your spouse should receive, the next step is to determine who is to receive your remaining assets. Even if everything is to pass to your spouse, you should specify who will receive the remaining assets in case your spouse dies first. Of course, your children and/or other beneficiaries can receive these remaining assets in whatever dollar amounts or proportions of your estate you desire. You need to determine whether the recipients of your remaining assets should receive them outright or in a Family Trust.

If Remaining Assets Are To Be Held In A Family Trust

- When is the trust divided into shares
 - Immediately, at attained age – youngest/oldest, at death of your spouse
- Amount of shares
 - Equal, percentage, dollar amount or combination
- May income and/or principal be distributed

If your remaining assets are to pass to a Family Trust for the benefit of your children and/or other beneficiaries, there are a number of decisions that need to be made. The first decision is when is the trust divided into various shares for your beneficiaries, and the size of each of those shares - they might be equal, a percentage of your estate or a dollar amount. Generally, the Family Trust will divide immediately upon your death, when your beneficiaries reach a certain age (such as when your youngest child reaches the age of 22) or, perhaps, at the death of your spouse. Typically, my clients prefer the division of the trust to occur after their youngest child reaches age 22 so that the entire trust can be used to pay educational expenses for their children and then divided after all those educational expenses are paid. You also determine whether income and/or principal may or must be distributed to your children or other beneficiaries.

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If Remaining Assets Are To Be Held In A Family Trust

- When are they to receive their shares
 - One or multiple distributions
 - Equal, percentage, dollar amount or combination
 - At attained age or number of years
- Who receives share if child or other beneficiary dies
 - Their children
 - Your other children and/or beneficiaries

In addition to determining when the trust is divided into shares, you need to determine when your children or other beneficiaries are to receive those shares and the size of each distribution -- they might be equal, a percentage of the trust or a dollar amount. Distributions can be made once or at several times. Often my clients will decide that there should be three distributions. The distributions can occur upon a beneficiary reaching a certain age (for example 25, 30, 35) or a certain number of years after the trust is established. If a beneficiary, such as a child, should die before receiving all of their share, you need to determine whether their share will pass to their children, which is normally the case, or whether their share should pass to your other children and/or other beneficiaries.

If Remaining Assets Are To Be Held In A Family Trust

- Trustee's job includes
 - Trustee serves as long a trust exists
 - How assets of trust are invested
 - Whether discretionary distributions are made to beneficiaries
- Who is to be the Trustee of the Family Trust
 - Can be bank, other family member or trusted person
 - Can be spouse if not alone

Finally, you need to determine who is the Trustee of that trust. The Trustee will serve so long as your Family Trust stays in existence. The Trustee has basically two jobs: one is to determine how the assets of your trust are to be invested (in stocks, bonds, or some other type of investment) and second, what distributions are made to your beneficiaries if your trust provides that discretionary distributions of income and/or principal can be made to those beneficiaries. The Trustee can be your spouse, a bank, another family member or a trusted individual. For tax reasons your spouse should not be the only Trustee of a Family Trust.

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Who Are To Serve As Your Executor And Guardian

- Who is to serve as your Executor
 - Acts for one year after your death
 - Makes sure provisions of your Will are followed
- Who is to serve as Guardian for your minor children
 - Children live with Guardian
 - Trustee handles financial affairs

The last steps are to decide who is to serve as Executor of your estate and Guardian for your minor children. The Executor serves for about a year after your death, to make sure that the provisions of your Will are followed and that your assets are distributed correctly. Your minor children will generally live with the Guardian you select. A Trustee can handle the financial affairs for your children. A Guardian handles the personal matters for your children.

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In this tutorial we have discussed the steps necessary to design your Will. The first step is to gather information regarding you and your family. The second step is to make decisions as to who will receive certain assets or specific amounts. The third step is to decide who is to receive your remaining assets and whether those assets are to be distributed outright to them or held in a trust for their benefit. The last step is to decide who should serve as Trustees of the various trusts created, the Executor for your estate and the Guardian for your minor children.