

# Wills & Medical Directives



*Brooke Hardie, Estate Planning Attorney*

“For most people, estate planning is about protecting the ones they love. I’m fortunate to do what I do, because every legal document I draft begins with a story about family, friendship and life passions.”

Careful planning is the very best way you can make sure your life’s work benefits the people who matter most to you. Whether you’re single, married, straight, gay, with children, grandchildren or aging parents, everyone should have a will and medical directive in place to insure their wishes are carried out in the event of death or a serious medical crisis.

The benefits of good planning can make a significant difference in the lives of the people you love, giving concrete direction to many important issues such as what will happen to your property and who will take care of your children.

Call today for a free consultation about your estate planning. This simple, half-hour meeting will answer many of your initial questions, including how much it will cost and what documents you will need in order to prepare your estate.



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## FREQUENTLY ASKED QUESTIONS

### Who Should Have a Will and Medical Directive?

Any person – regardless of age, marital status or economic position – should have a will so that they may clearly direct how they want their property distributed and how they want to be treated in the event of a medical crisis. Today's blended families, single parents and same sex couples especially need to provide for their loved ones through these important legal instruments.

### How Can a Will Protect Me?

Contrary to popular belief, wills and other forms of estate planning are not reserved solely for the wealthy and elderly. Those who can benefit most from having a will include individuals who:

- Are married or in a committed long-term relationship
- Have minor children, aging parents and/or pets who will need care in the event of their death
- Want their personal property to go to specific people in their lives
- Own a home or any other type of real estate individually or jointly with another
- Want to leave specific property to non-relatives such as stepchildren, partners in life to whom they are not married, charities or a devoted friend (often the most important people in a person's life are not among those who would be his or her legal heirs-at-law)
- Have more than \$50,000 in non-homestead assets
- Want to make the probate process as easy and cost-effective for family members as possible
- Want to disinherit someone

### What Happens to My Property if I Die Without a Will?

Should you die without a will, the state directs how your property will be distributed by creating a hypothetical will according to state laws. These intestacy laws are not likely to distribute property the way you would have if you had written your own will. For instance, very often one spouse may prefer to leave everything to the surviving spouse who will then provide for and take care of the children. But this may not necessarily happen if there is no will. If one spouse dies without a will, the surviving spouse more often than not receives only his or her one-half share of the family home with the children inheriting the other half. Although minors have the legal capacity to own property, they do not have the legal capacity to manage it. Thus, if your children inherit a share of your house, your spouse would not be able to sell it, rent it out, or even refinance the mortgage without a costly and time-consuming court order. In the case of same sex couples, current Texas law does not provide for even this kind of spousal protection.

### Can I Appoint a Guardian for My Children in My Will?

Yes. Every parent should write a will in order to appoint a guardian to care for their minor children and manage the children's property. If you do not leave a will and another parent is not living or recognized, the court may appoint a guardian who you would not necessarily have chosen to raise your children and manage the property they inherit.

### I've Been Told That "It Can Be Expensive to Die Without a Will" – What Does This Mean?

Dying without a will can tie-up assets for an undetermined period of time. A court proceeding is often required to identify who the heirs are, to appoint an administrator, to determine what debts must be paid and how, and to decide how the individual's remaining property should be distributed. The administrator may be required to post bond to insure that the duties are performed properly. If the estate cannot be settled amicably, the court will resolve the disputes. Because of congested dockets, court proceedings are often slow. In addition, legal fees and court costs may erode estate assets. In fact, depending on how difficult it is to divide the property and whether the heirs agree on the value assigned to it, court proceedings could be so lengthy and costly that the estate is completely depleted. The bottom line is that dying without a will costs time and money and causes frustration for the family of the decedent.

### Who Needs To Worry About Estate Taxes?

The federal estate tax – a tax imposed on assets left at death – now affects fewer than 2% of the nation's residents. This tax applies only to people who die leaving a taxable estate worth \$2 million or more. Currently, Texas has no state estate tax of its own.

### What Other Planning Should I Do?

While a will enables you to name an executor of your estate, designate a guardian for your minor children, establish a trust, minimize estate tax liability if necessary, and reduce probate-related costs and delays, it cannot appoint individuals who you would like to act on your behalf in the event of your incapacity. In order to enable someone to handle your financial affairs in your place and/or to make health care decisions for you if you are unable to do so yourself, you should execute the appropriate powers of attorney and advance directive:

- Durable Power of Attorney for Finances – In this document, you appoint another individual to make financial, business and property management decisions on your behalf if you become incapacitated. This person manages your assets and must do so in a prudent manner, remaining accountable to you and bound to act solely in your best interests.
- Advance Health Care Directive & Durable Power of Attorney for Health Care – This document allows the person named as your agent to make health care decisions for you when you can no longer make them for yourself. It may also contain statements of wishes concerning such matters as life-sustaining treatment and other health care issues, as well as instructions concerning organ donation, disposition of remains and your funeral.

### How Much Does It Cost to Have a Will Drafted?

Executing a will is not as complicated or expensive as you might think. Talk with an estate planning attorney about what type of will your circumstances might require and what other ancillary estate planning documents you should consider executing.

*These materials provide general information and are not intended to give advice on any specific legal matter. In any specific case, when considering estate planning, including estate tax planning, you should seek the guidance and advice of your own legal and tax counsel.*