

Legal Q&A – “Wills almost always needed

Q: Do I really need a Will?

A: The answer to this question should be, in almost all cases, a resounding YES. Many people answer this question with a “no” for reasons they feel (or convince themselves) are valid or because they feel that the preparation of a Will can be easily put off to some (usually unspecified) time in the future.

The fact of the matter is that for different reasons almost everyone should have a Last Will and Testament setting forth the person’s current wishes and desires with regard to the disposition of their estate. The Will should also appoint a fiduciary to manage and administer the estate as well as a guardian for any minor children. It should be prepared by and executed under the supervision of an experienced attorney, because failure to follow statutory requirements can invalidate the Will. If you die without a Will, your assets will be distributed under the terms of your state’s “intestate succession” laws. That means that your money and property could end up with family members you haven’t spoken to in years.

It is very important to give serious consideration to contacting an experienced attorney to have a Will drafted. This attorney can assist you with preparing the Will and guiding you in estate planning issues in order to ensure that your assets can be passed on to your loved ones in the most efficient manner and at the lowest cost, including the minimization of estate taxes. Also, an experienced attorney can assist you with updating your Will as well to reflect major life events, such as a divorce, birth of a child, or if you happen to move to another state.

Having a Will prepared and/or updated by your attorney is not only the prudent and responsible thing to do, regardless of age or circumstance, but one that will leave you with peace of mind, before you remain at peace forever.

Q: Is a Power of Attorney for Health Care the same as a Living Will?

A: No. A living will is a legal document that a person uses to make known his or her wishes regarding life prolonging medical treatments. It can also be referred to as an advance directive, health care directive, or a physician's directive. It is important to have a living will as it informs your health care providers and your family about your desires for medical treatment in the event you are not able to speak for yourself.

A Power of Attorney for Health Care (“Health Care Proxy”) appoints an agent to make most decisions related to your health care if and when you are unable to make those decisions yourself. If you specifically grant the power, your agent can decide to admit you to a nursing home or community-based residential facility, and make other health care decisions. If you have both a Living Will and a Power of Attorney for Health Care, the Power of Attorney for Health Care controls if there is any conflict between the two documents. You should review your documents with an elder law attorney periodically to make sure that they are up to date.

