WILLS

WHAT IS A WILL?

By definition, a will is the legal declaration of your intentions which you desire to be performed after your death. Although this definition has withstood the scrutiny of lawyers and judges for two centuries, it does not adequately portray the function of a will.

A will should be thought of as one part of an estate plan, a plan which represents the combination of a person's life – his or her work, hopes and dreams. It is not easy to accumulate an estate in this day of high taxes, rising costs of living and of education children. An estate represents what is left after a lifetime of work, and generally it is accumulated in the hope of passing on some measure of support to your family.

The best way to carry out your hopes and dreams is through careful estate planning. Your will is the most important part of an estate plan, and perhaps the most important document you will sign in your lifetime. It serves as a substitute for what you would do for your family if you were still alive.

WHAT ARE THE REQUIREMENTS FOR A WILL?

1. You must be 18 years of age, except that a married person of any age may make a will.
2. You must be of sound mind.
3. The will must be in writing, either typewritten or handwritten.
4. The will must be signed by you and should be witnessed by two or more competent persons who must sign the will in your presence and in the presence of each other. (Witnesses should not be persons who have been named as beneficiaries in the will.)
5. In Nebraska, the law also allows "holographic" wills. These are handwritten wills, which are not witnessed. To be valid, the material provisions of the will, the signature and the date of signing all must be in the handwriting of the person making the will. A holographic will can be difficult to prove and is not a recommended way of disposing of property.
6. A will is not required to be notarized, but a notarized statement, called a "Self Proving Affidavit" can be added which makes the will easier to prove in Court if the will is challenged.

WHO NEEDS A WILL?

Every man or woman, married or single of age for making a will should have an estate plan, including a properly drafted will. A person does not need to have a large estate to warrant careful estate planning. Indeed the smaller the estate, the greater need for care including a well-planned will, since each dollar wasted in unnecessary taxes and other expenses hurts that much more.

Even when a husband and wife are joint owners of all of their property, each should have a will. This is necessary to control disposition of the property upon the death of the surviving spouse since neither knows who may survive, or if the survivor will live long enough to write a will. There is also the possibility of each individual inheriting money or property from some unexpected source. Those assets would also be subject to the terms of that individual's will.

Very few people die without leaving some type of property, which could be controlled by a will. However, property which is NOT controlled by a will (such as property held in joint tenancy, property that has been placed in trust, life insurance and other property), should also be taken into consideration in planning your estate.

1. If you leave a spouse, but no children and no parents, your spouse will receive all the property.
2. If you leave a spouse and no children, but you have a surviving parent or parents, your spouse will receive the first $50,000 of your estate plus one-half of your remaining property. Your parents will receive the other half.
3. If you leave a spouse and one or more children, and your spouse is the parent of all your children, your spouse will receive the first $50,000 plus one-half of your remaining property. Your children will receive the other one-half divided equal shares.
4. If your spouse is not the parent of all your children, your spouse will receive one-half of your estate and your children will receive the other one-half in equal shares.
5. If you leave no spouse, your children will receive all of your property in equal shares. If you leave no spouse or children, then your grandchildren will receive your property in equal shares. If you have no grandchildren, your parents will receive your property.
6. If you leave no spouse, children, grandchildren, or parents, yaour estate would go to the next of kin, as defined in Nebraska law. The portion of your estate that a relative would receive would depend upon how closely he or she is related to you.

The laws provide only a rigid formula, and make no exceptions for those in unusual need. The failure to make a will could mean hardships and added expense for your immediate family, and benefit some relatives you may not even know.

The laws make no provision for friends, business associates, charitable institutions, schools or churches, and they treat all types of property the same. There are no special provisions for family heirlooms or jewelry or a family business, for example. They also fail to consider the different needs of different beneficiaries, some of whom may need protection against their own spending habits or the exorbitant demands of a husband or wife. The only way to handle these special situation is through a carefully planned will.

CAN I APPOINT A GUARDIAN FOR MY CHILDREN IN MY WILL?

You may designate in your will the person or persons you would like the court to appoint as guardians of your minor children. While this is not binding on the court, the wishes expressed in a will are usually followed, provided that the persons named are willing to serve as guardians and that the court finds the appointment to be in the best interests of the children. If you die without a will, the court may appoint a guardian for your minor children without knowing your wishes.

WHAT IS A PERSONAL REPRESENTATIVE?

"Personal representative" is the name now used for what once was called an executor or an administrator. You can designate in your will who is to be the personal representative of your estate. If you do not designate a personal representative, your surviving spouse has first priority for appointment as the personal representative. Next in order of priority would be other heirs. If no personal representative has been appointed within 45 days after your death, any creditor can apply for appointment. Any person appointed as personal representative must be at least 19 years of age.

DOES THE PESONAL REPRESNETATIVE HAVE TO LIVE IN NEBRASKA?

It is not required by law that the personal representative is a resident of Nebraska, as long as the person named is otherwise qualified by age and suitability.

Upon your death, your debts must be paid out of the property you leave. There must be a determination of whether there are debts to creditors or taxes due to the state or federal government. The law provides for time limits in which creditors may take claims against an estate, and upon proper procedure through court, claims not filed are no longer a legal debt.

WHEN SHOULD I MAKE A WILL?

You should make a will now. A prudent person does not wait for a catastrophe or other compelling reason to begin planning his or her estate. You can always make changes in your will later if circumstances change.

In any event, you should review your estate plan with your attorney periodically. Changes in your property holdings, your family (marriage, death, divorce) and simply inflation in values can change results of your intent which has been expressed in the will. Changes in the tax laws can substantially affect the intent that you had when making the will. Review your own will annually; review it with an attorney when family changes occur or at least every three years.