

## Do You Need a Will? - Part 1

"They couldn't hit an elephant at this dist..."

- Purported last words of U.S. Army General John Sedgwick, killed by a distant Confederate sniper at the Civil War battle of Spotsylvania

Life often ends at an unexpected time. Making a will is one way to help prepare for the uncertain timing of death. Here are some important Q's and A's about wills.

### Q. What exactly is a will?

A will is a legal paper that takes effect at the death of its maker. You write a will to say who will get your things after you die. What you own at the time of your death is called your estate.

### Q. Who can make a will?

You have to be at least 18 years old and of sound mind. "Sound mind" means that you are mentally "competent" – that is, you know what you are doing and you can decide things for yourself. Unless written in hand by its maker, the will must be signed, or the signature acknowledged, by the maker in the presence of two competent witnesses, who must also sign the will.

### Q. Do I really NEED a will?

You probably need a will IF you say "yes" to any of these:

- You want to leave certain things to certain people.
- You want all or part of your things to go to charity.
- You want one person to get more or less than the others.
- You want to be sure one person gets nothing.
- You have no close family (parents, children, spouse, brothers, or sisters).
- You want one distant relative to get everything.
- You own valuable property – such as land, buildings, or a business.
- You are among the wealthiest 1 percent of Americans who may owe estate tax. (As of 2007, a federal estate tax return is not due unless the estate value is \$2 million or more.)

### Q. What if I don't make a will?

If you die without a will, your estate is subject to a "one-size-fits-all" Tennessee law. It may not be a good fit for you. Here is what happens with no will:

1. First, your debts and valid claims against your estate must be paid.
2. Next, the costs of handling your estate and any taxes due must be paid.
3. Your remaining property and assets go to your husband or wife and your children. Your surviving spouse gets at least one-third, and can get one-half if there is only one child. If there is more than one child, then the children get equal shares from the remaining two-thirds.
4. No children? Then your current spouse gets everything.
5. If your spouse dies before you, then your children (or your grandchildren, if any child has died before you) inherit everything.
6. No spouse and no children? Then your parents will inherit everything.
7. If your parents have also died before you, then your brothers and sisters, or their children, get your things.
8. If you die with no spouse, children, parents, brothers, or sisters, then other relatives will inherit your things.
9. The State of Tennessee gets your property only if you have no living relatives.

Next in Part 2 – Do I need a lawyer to draft a will? What are the legal rights of a surviving husband or wife?

by Jim Hawkins, Managing Attorney, Gallatin office, Legal Aid Society

**Note:** This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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