

Do You Need a Will? - Part 2

"See what will happen if you don't stop biting your fingernails?" -- Will Rogers, to his niece, on seeing the Venus de Milo, the famous (armless) statue

One way to reduce your stress about the future is by making out a will. (It's much better than biting your fingernails.)

Part 1 of this series on wills answered questions about what happens when a person dies without a will. Here are Q's and A's about what happens when there is a will.

Q. If I am a surviving spouse, can I be 'cut out' of my deceased spouse's will?

No. Regardless of what the will says, a surviving spouse can claim part of the deceased spouse's "net estate." The net estate is what is left after payment from the estate of secured debts, funeral costs, administration expenses, and "one year's support allowance," and before payment of all other unsecured debts and claims.

Q. What percent of the estate can a surviving spouse claim?

The surviving spouse can choose, or elect, to claim part of the net estate. This is called the "elective share." How much the surviving spouse can take depends on the length of the marriage:

- Less than 3 years: 10 % of the net estate
- 3 years to 6 years: 20 % of the net estate
- 6 years to 9 years: 30 % of the net estate
- 9 years or more: 40 % of the net estate

This law says that the surviving spouse also can get one year's support allowance from the estate. This helps to protect the surviving spouse from unsecured debts that might eat up much of the estate.

Q. Is it a good idea for me to handwrite my own will?

No. You can do it if you are at least 18 and of sound mind, but it is easy for problems to happen if you handwrite your will.

The signature and all of the material provisions of your will must be handwritten by you if you are making your own will. You must sign and date your will.

A handwritten will is no good unless 2 witnesses can testify that the handwriting is indeed that of the person who made the will.

Also, a court must have adequate evidence that the person who made the will had the intent for the paper to be his or her final will.

Even if these requirements are met, unclear wording can cause problems – and there can be big problems if any wording of the will is in conflict with other parts of the will.

Q. Do I need a lawyer to make a will?

Under Tennessee law, no – but it is usually a bad idea to try to write your own will without using a trained lawyer.

It is easy to make a mistake that would cause your will to be no good and invalid. Most attorneys in private practice can help you with a simple will for a reasonable fee. More complex estate planning requires more work and will cost more, but it is usually well worth it for your loved ones. Bottom line: think smart – use a lawyer.

Next in Part 3 – What is covered by a will? Who makes sure my will is carried out?

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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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