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WHAT IS A SIMPLE WILL?

A "Simple Will" is what most attorneys call their less expensive, less complex form of a will. There is no standard format. However, for a will to meet the most basic needs of a client, even in its simplest form it needs to cover some basic areas. Also it must be executed properly before witnesses to be valid.

Your simple will should do the following:

1. Appoint the Personal Representative (PR) of your choice to administer your estate. (This is the same as an executor, or administrator.) Also, in most cases the PR should be appointed to serve without a bond. This provision in your will spares your estate the extra cost of buying a bond or insurance to protect against mishandling by the PR.
2. Direct the distribution of your property to your heirs.
3. If you have minor children, nominate a guardian and or conservator for these children.

PERSONAL REPRESENTATIVE

The Personal Representative is the person who will do most of the legwork running your estate when it is probated, subject to the direction of an attorney. An organized, responsible and financially adept person can save your estate a lot of money in attorney fees. During probate, the Personal Representative monitors your mail, looking for assets and debts, runs a bank account and pays all creditors, transfers and invests money as needed, cares for real property until it can be sold or distributed, and settles disputes between heirs. The Personal Representative is entitled to ask for a fee for his or her services, but commonly waives the fee, particularly if the person is a beneficiary under the will. (The fee may be taxable income while the distribution is not.) The personal representative will be reporting to the court the status of your assets and will need to account for all expenditures. It is best to select someone who knows your financial situation, is trustworthy, can deal with the other heirs, and is responsible.

PROPERTY DISTRIBUTION

Keep in mind that a will may not control the distribution of all of property. Other methods of distribution include putting property in the names of two or more people with a right of survivorship. The property is then transferred to the survivor(s) automatically. Another way is to put the property in a trust, and then the property transfers according to the terms of the trust, which may or may not be triggered by your death. Some property, such as life insurance and retirement accounts, will transfer to the persons named as beneficiaries. A will affects only property not otherwise transferred. In a will, married couples normally leave everything to each other first, then the balance to their children. Single persons may designate a significant other or children. Beneficiaries can also be non-relatives or charities in any amount or percentage a person desires. Most wills state that the personal property, (i.e., books, pictures, memorabilia, furniture, etc.) is to be divided up by one or more heirs as they desire, except that the PR can step in and settle a dispute by having the final say. This arrangement spares the estate from paying attorney fees and court expenses to deal with small items. The unwanted leftovers can then be sold at an estate sale with the proceeds going to the heirs. The more expensive items—savings, investments, real estate, etc.— are best devised or transferred via a general clause called the "Residuary Clause." This means that the total value of these items will be prorated among the heirs. Often the assets are liquidated and cash is distributed. But occasionally an heir might want the

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distribution in the form of stock, or real estate. Then the heirs will need to negotiate and agree to equalize the values of the distributions so no one feels cheated. As long as all heirs are in agreement, and there were no specific words of limitation or conditions in the will, just about anything the heirs can mutually agree upon can be done. In the absence of an agreement, however, the property will probably need to be sold. And even if the heirs agree to keep property intact, sometimes a sale is still necessary if the debts of the estate can't be paid any other way. The main point with drafting a will with a "Residuary Clause" is to build in maximum flexibility. From year to year your assets may change, and your beneficiaries may not survive you. The general clause will transfer whatever assets you have left—the residuary of your estate. By naming the "surviving descendants" of your original beneficiaries, you insure the distributions will go to that branch of the family if a specific beneficiary dies before you do.

RIGHT OF REPRESENTATION

When you leave part of your estate to a member of your family, such as your niece, normally you intend that your niece will get the property and then pass it down to her children. By stating that you leave the property to your niece, but if she does not survive you, then to her children in equal shares "by the right of representation," you insure that if your niece dies before you do, your niece's share will be subdivided among her children.

GUARDIAN/CONSERVATOR

A guardian takes care of a person, a conservator takes care of money. In terms of your children, the guardian will be the person with whom they live, who takes them to the doctor when they are sick, and who pays their basic bills. A conservator, on the other hand, would be charged with managing finances. This person would give the guardian money for the expenses and would run any investments or businesses for the children until they became adults. (A young child could receive a large sum of money via life insurance proceeds on your life, and would need someone to invest and manage this money.) One person can be both guardian and conservator, or these roles may be filled by two separate persons. (Having one person do both is more convenient and common.) While the court is not technically bound to appoint the person you nominate in your will, 99% of the time the court will follow your designation, because the court feels the parents of the children know better than the court, who is suited to raise their children. If you are concerned about who would be appointed *for you* as a guardian/conservator should you become incapacitated, you may want to state your preferences in a separate document. This nominatior is not normally put in your will. The court will nearly always follow your wishes.

EXECUTION OF A WILL

In Oregon, in order for a will to be legal, it must be executed in the presence of two witnesses, who sign the will. Neither witness can be a beneficiary. In addition, the witnesses should be required to execute an affidavit at the time the will is executed, where they state that they did witness the will and that the person executing the will was o legal age and competent at the time. This affidavit can be provided to the probate court in the event there is a dispute over the will later.

Note: A beneficiary can be one of the witnesses but I strongly discourage this practice

WHY YOU SHOULD HAVE A WILL

Without a will, your property will pas according to intestacy laws, the State of Oregon's assumptions as to how your property should be distributed. This method can leave property to your elderly parents, who don't have any use for it, and will omit friends, significant others, and charities. Also, a will is the only way to give disproportionate amounts to different people.

A will can be useful in avoiding probate. Some assets can be transferred merely by presenting the will and a death certificate. (The DMV will transfer a car this way.)

A will is the most common way to designate a guardian/conservator for your minor children. Only with a will can you state your preference for the personal representative and request that he or she not be required to post a bond