

Wills, Trusts and Estates 101

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This article is intended to answer basic questions about Wills, Trusts and Estates—all very important legal documents and matters. While you may be able to do some work on your own or with the aid of do-it-yourself materials, it is recommended that you seek legal help if you have questions, property, investments, a small business, a spouse or children, personal items you want to leave to others or organizations, etc.

What is a will? An expression of a person's intention concerning the disposition of property at death. A will enables a person to develop a plan that considers their family's needs and their property while minimizing tax burdens. A person who dies (the **decedent**) leaving a valid will is said to die **testate**.

What is a contractual plan or benefit? Retirement plans and death benefits from insurance policies are contractual and paid pursuant to a beneficiary designation. In Maryland, insurance policy death benefits are generally exempt from Maryland inheritance tax (unless payable to the estate). Death benefits from retirement plans are generally subject to Maryland inheritance tax. When beneficiaries are not designated, benefits are paid to the estate and subjected to probate costs and inheritance tax.

What are the Maryland laws of intestacy? If a person dies without leaving a valid will, the Maryland laws of intestacy will govern the division and distribution of one's probate estate as follows:

- a. Spouse and minor child: ½ to spouse, ½ to children;
- b. Spouse and adult child: \$15,000 plus ½ to spouse, balance to children;
- c. Spouse and no children: \$15,000 plus ½ to spouse, balance to parents;
- d. No spouse and children: all to children; and
- e. Nether spouse nor children: parents and work down.¹

Real property located in another state will pass under the laws of intestacy of that state.²

What is joint ownership? If husband and wife are co-owners of property in Maryland, **tenancy by the entirety** is presumed or if co-owners are not married and the property is held as **joint tenants with the right of survivorship**—upon the death of one spouse/owner the property passes to the surviving joint owner by operation of law. If co-owners are not married, there is a **tenancy-in-common** and the property passes pursuant to the terms of the decedent's will.

How are Trusts used in Estate Planning? Creating trusts can be used to avoid the probate process, which can be costly and delay the transfer of the decedent's property. Trusts can also be used to secure certain tax advantages and for property management, including transferring property to minors and incompetents.

What is a Maryland Advance Directive? Like a living will, it is a document that dictates withholding of life-sustaining procedures, if you become terminally ill and unable to so direct, and permits an individual to appoint a health care agent to make health care decisions in the event of incapacitation.

What is a Power of Attorney? Enables you to appoint someone you trust to be your health care agent to make any necessary health care decisions for you and to see that doctors and other health care providers give you the type of care you wish to receive.

What are other Estate Planning Considerations? Gifts, Federal and State Death Taxes, Marriage or Divorce, Payment of Taxes, Survivorship, Joint Wills (not recommended), Gifts in Trusts, Employment, Care, Religious faith or affiliation

What information is needed to prepare a will? Name, Residence, Age, Medical History, Present and Past Marital Status, Present and Past Citizenship, Intended Beneficiaries, Minor Beneficiaries, Guardianship of Minor Children, Funeral Arrangements, Assets (tangible personal property, real property, insurance policies), Interests in Closely Held Business, Listed Securities, Pension, Profit Sharing, Corporate Benefits, Bank Accounts, Trusts, Jointly Owned Assets, Other Assets (patents, copyrights, contract rights, tort claims), Mortgages, Secured and Unsecured Debts, Advisors (Insurance Consultants, Pension Advisors, Accountant, Business Advisors, Investment Advisor, Trust Officer), Personal Representatives, etc.

¹ Md. Code Ann., Estates and Trusts §§3-101 (2001 & Supp. 2004).

² See *Harrison v. Prentice*, 183 Md. 474, 38 A.2d 101 (1944).

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