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# Do I Need a Will?



This information and checklist were prepared as a handout for clients who are thinking about a will and looking at alternatives.

It is all in the pdf document attached at the bottom of the page.

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## DO YOU NEED A WILL?

***Elder Law Advice line at 316-265-2252***

Many people believe that a will is the best way to express their desires for disposing of their property after their death. This may or may not be true. There are other things to consider.

This document discusses the pros and cons of a will, as well as describing the alternatives available to Kansans.

## **Advantages of a Will -**

Kansas law defines how a person's estate is distributed at death -  $\frac{1}{2}$  to a spouse (if married over 10 years) and  $\frac{1}{2}$  to any children of the deceased. A will is one way to alter this distribution.

One should consider a will if:

- There are children they don't want to receive any of their estate
- There are children they wish to receive more than their "share" of the estate.
- The home or other property is not in joint tenancy with rights of survivorship and they want their spouse to inherit the full value of the estate.

Any property with a title - home, land, car, motorcycle, RV, etc. - have special rules that apply, if the owner is dead at the time of the sale.

In families where personal property cannot be distributed without conflict, may find that a will, and oversight by a Judge, limits the conflict.

## **Disadvantages of a Will -**

If there are assets to be distributed under the will, the family must file the will for probate with the Court. This involves hiring an attorney to provide the proper paperwork and instruction in the process. The Executor appointed in the will (usually a family member) must take action to keep the assets safe. However, nothing will be completed or distributed until at least four months after the filing of the will with the court. This period of time is reserved for creditors of the deceased to file claims against the estate.

If there are no assets to be distributed under the will, it is still the responsibility of the Executor named in the will (or the holder of the will) to notify all heirs and provide them with a copy of the will. The Executor would want to consult with an attorney to make sure this process happened appropriately.

## **Alternatives to a Will -**

Before you decide that a will is something everyone must have, consider the following alternatives which may cover all the items you would include in a will:

**Home or other real estate: Transfer on Death Deed** - this is a document that can be prepared and signed at any time. It directs the transfer of your interest in property to another person at the moment of your death. It doesn't avoid creditors or SRS Estate Recovery. It doesn't avoid taxes (although only very large estates are taxed in Kansas now). It doesn't transfer ownership until your death, so you don't cause possible Medicaid Transfer of Asset penalties. You still own your property, so you can sell it at any time. Property owned in joint tenancy with right of survivorship is fully transferred to the surviving owner, upon the death of one owner.

Note: You must provide an accurate legal description of the property, so obtaining a copy of your deed is best.

**CD's, Stock Accounts or Life Insurance: Designation of a Beneficiary** - this is an action that is a regular part of setting up or rolling over these assets. You can name a person or more than one person as your beneficiary and these assets are paid to them, upon proof of your death. Stocks held outside of a brokerage account may not qualify for this option.

**Car, Recreational or Other vehicle: Transfer on Death form** - this is a designation you can have added to your car title. It is best to do with when pay your annual vehicle registration. Work with the County Treasurer or Tag office to complete the paperwork. The vehicle will be transferred to them upon the proof of death of all owners. This must be separately done for each automobile owned.

**Bank Accounts: Pay on Death Beneficiaries** - this can be made in writing at the bank to designate to whom the money should be paid upon the death of all account owners. The paperwork can be provided by the Bank. It must be done separately for each account held in each bank.

**Personal property - Your written instructions or written designation of ownership** - If you wish to leave instructions about the personal property you own (furniture, jewelry, family heirlooms, etc.) you can write down your instructions for

your family to follow. You should provide copies to one or all family members or leave your instructions in a designated location. If you want something more binding, you can write and sign a self created document that you and other named persons own certain personal property in joint tenancy, with rights of survivorship. You should sign and notarize the statement. This will give the other person a legal basis to prove their claim of ownership.

► If you find that this list contains all the items you are concerned about distributing, you don't need to go to the trouble and expense of preparing and probating a will (or preparing a living trust). Kansas law provides sound legal alternatives to probate that satisfy the needs of many people.

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## **Alternative to Probate Check List**

Action steps for completion: Check off or date each step to show completion

### **Transfer on Death Deed for Home or Land**

\_\_\_\_\_ Obtain legal description - Register of Deeds or your records

\_\_\_\_\_ Sign a Transfer on Death Deed before a notary public

\_\_\_\_\_ File Transfer on Death Deed with the County Register of Deeds (small fee charged)

### **CD's, Stock or Life Insurance**

\_\_\_\_\_ Make a full list of these assets

\_\_\_\_\_ Contact each company or bank to obtain proper form or determine that this step was taken when the account was opened

\_\_\_\_\_ Complete form for each asset

## Motor Vehicle Transfer on Death Designation

- \_\_\_\_\_ Determine month when you register your car/pay car taxes
- \_\_\_\_\_ Go in person to the Treasurer/Tag office for registration- Take car title
- \_\_\_\_\_ Complete the form for designation – listed on registration papers

## Bank Accounts - Pay on Death Beneficiaries

- \_\_\_\_\_ Determine location of each bank and bank account
- \_\_\_\_\_ Meet with bank to determine if a beneficiary has been named
- \_\_\_\_\_ Complete paper work as needed to name beneficiary on each account

## Personal Property - Make a list of your desires

- \_\_\_\_\_ List the property that has value to you or others
- \_\_\_\_\_ Put a name after each item of property or put the words “Divide” to indicate that you want your heirs to make the choices
- \_\_\_\_\_ Put the list in a safe place, known to one or more of your heirs, or make a copy and give to one or more of your heirs.

Last updated on May 09, 2024.

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