

Last Will and Testament

Scott Mehr

You have never seen a hearse pulling a U-Haul. The stark reality is, upon your death, all your stuff has to go somewhere. Your last will and testament provides your instructions about where your stuff is supposed to go. Your will is like a letter to the court. It is to the court, and not to your heirs, because every will must be presented to the court before it is valid. The process of administering your will is known as probate.

The person designated in to administer your affairs and make sure all your stuff gets to where and whom you directed is known as your executor. The probate court oversees your executor's actions to make sure that they do everything that you requested. On average, the probate process takes about 7 to 9 months and depending on complexity of your affairs costs between 3% to 8% of your total assets. In addition, probate is a public proceeding, as such the details of your will become part of the public record.

To cut costs and time delays associated with probate, every state has a simplified probate process for individuals without real property and whose wealth is less than a specified amount. That minimum wealth threshold in California is \$150,000. Using a simplified probate process makes using a will a viable option for individuals who do not own real property and have limited wealth.

Note: Not all assets are subject to probate. Assets with named beneficiaries, such as life insurance, IRAs, 401Ks, jointly-held assets with rights of survivorship and financial accounts with POD (pay on death) designations all pass outside of the will directly to the named beneficiary and are not considered part of the probate process.

If your circumstances are such that a will based plan, combined with properly named beneficiary designations, will not trigger unnecessary costs, your estate plan might be built around the use of a simple will. Wills are individual documents, so if you are married, your plan will contain one will for each spouse. Finally, and of extreme importance, in addition to outlining how your assets are to be distributed, guardians for minor children are named in the will.

Changes to a will are provided in a document known as a codicil. In practice, it is usually easier to write a new will than to modify an existing one.

In order for your will to be valid, it must be signed and dated in front of at least 2 witnesses. Witnesses must be at least 18 years of age and not named as beneficiaries or be potential heirs.