Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio

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Answers to Will and Probate Questions

What is a Will?

It’s a written document of a person’s final requests and gifts. A will tells Probate Court how to transfer a person’s property after death. It must be witnessed by two persons. There are other legal requirements. Crossing out or writing in words will invalidate a will. It is best to have an attorney draft a will.

Can I avoid probate if I don’t have a will?

Possibly. Many people own property jointly with a spouse. If a deed is titled ‘joint tenant with right of survivorship’ it passes to the survivor automatically. Automatic transfer happens when there is a surviving owner’s name on a deed, life insurance policy, bank account, car title or other document. Property that passes automatically is called ‘non-probate’ property. Probate Court does not decide who should receive non-probate property because there is a document that shows who should receive it. Not all property can be ‘non-probate’ property. Most persons have both probate and non-probate property.

What happens if I own ‘probate property’ but don’t have a will?

Without a will, probate property passes according to the Ohio law:

- If there is no surviving spouse, to the children;
- If there are no children, to the surviving spouse;
- If all the deceased’s children are also children of the surviving spouse, to the surviving spouse;
- If there are children of the deceased and the surviving spouse is a parent of one but not all, the first $60,000 to the surviving spouse and the rest divided equally among the children.
- If there is a child of the deceased (step-child of the surviving spouse), the spouse receives the first $20,000. Surviving spouse and child split the remainder.
- If there are children of the decedent (step-children of the surviving spouse), the surviving spouse receives the first $20,000. Of the remainder, one-third goes to the spouse and the
The rest is divided equally among the children.

- If there is neither a surviving spouse nor children, to the nearest relatives in the following order: parents, brothers & sisters or their descendants, grandparents or their descendants, stepchildren or their descendants.

**What is Administration of an Estate?**

When a person dies, there must be a proceeding in Probate Court before ‘probate property’ can be legally transferred. When a person dies with a will, the executor, supervised by the court, carries out the terms of the will, if possible.

**What is Relief from Administration?**

This is a simple procedure for small estates. Probate Court can grant Relief from Administration if:

- the value of all the probate property in the estate is below $35,000; or
- below $100,000 and the surviving spouse is entitled to all probate assets.

Probate Court can transfer the assets without a full administration. This simple procedure can save time, court costs and attorney fees. An estate can be relieved from administration even if non-probate property has much higher value.

**What happens if there is no Administration or Relief filed in Probate Court?**

The probate property would not “legally” belong to anyone. It could not be legally transferred; real estate and automobiles could not be sold. Certain services for homeowners, such as federally subsidized home repair, would not be available.

**When is it not necessary to have a Will?** If:

- you know you will have no probate property when you die;
- you have made informal arrangements for personal property and you are willing to trust that your wishes will be carried out,
- you are satisfied with a transfer according to the law,
- all your property passes automatically at the time of your death.

*This information is intended for general information only. Every estate is different based upon the type of property and family situation. For information specific to your situation, talk with an attorney. Article reviewed April 2012. CE-95-F266-CLAS*

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