

LAW OFFICES OF  
JOHN C. DEARIE  
& ASSOCIATES



QUESTIONS & ANSWERS ON:  
**WILLS AND ESTATES**

ANSWERS TO THE 20 MOST COMMONLY ASKED  
QUESTIONS ABOUT WILLS AND ESTATES

Our Wills and Estates practice, headed by Robert Reid, considers its trademark to be technical expertise



and creativity coupled with a genuine concern and interest in each and every individual we have the privilege to serve. Each Will we draw is customized to reflect clearly and simply the wishes of our client. We manage Estates with a commitment to efficiency and with sensitivity to the needs of the family whose loved one has passed on.

Based on our professional experiences, we have developed a short list of questions focused on the most important aspects of Wills and Estates. We feel the answers to these questions assist our clients in gaining the basic understanding of Wills and Estates. We trust that you too will find this brochure both interesting and informative.

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1) **What Is A Will?**

A Will is a document in which a person states how his or her assets are to be distributed after death. In order for the Will to be valid, it must be signed in the presence of two (2) witnesses. These witnesses sign the Will only as witnesses but they are not entitled to read or comment on your Will.

2) **Who Can Make A Will?**

Any person 18 years of age or older, possessing a sound mind and an understanding of the extent of his or her assets can make a Will. A man who makes a Will is called a "Testator" and a woman who makes a Will is called a "Testatrix."

3) **Do I Need A Will If I Have Very Few Assets Or Very Little Money?**

**YES.** Even if you have very little, you probably want your family heirlooms and other precious items to go to the right person or charity. A Will accomplishes this.

4) **I Have A Disabled Or Minor Child. How Does My Will Protect These Persons?**

In your Will, you can designate someone as guardian for your children. This will insure that the person you choose and you trust raises your minor or disabled children. Your Will can also have provisions to manage anything you may leave to your children.

5) **What Happens When A Person Dies Without Making A Will?**

If a person dies without having made a valid Will, the State (NY, NJ, CT, etc.) takes control of his or her assets and distributes them according to rules in the estate administration statutes. This is called dying "Intestate." No matter to whom you want to give your assets, if you die intestate, the State will distribute your assets according to its rules and there is nothing you can do about it.

6) **Can I Change Or Revoke My Will After I Make It?**

**YES.** Any Will can be changed or revoked as many times as you like. However, you must possess a sound mind and understand the extent of your assets each time you do this. You can change or revoke your Will right up until the moment of death or incompetency. You change a Will by executing a new Will. You cannot make changes by writing them on the old Will. You revoke a Will by tearing it up or doing something else that clearly indicates that it is revoked.

7) **What Is Probate?**

Probate is a legal procedure through which the Surrogate's Court in the County where the decedent resided decides whether a Will is valid and oversees the carrying out of the provisions of the Will. The Surrogate's Court charges a fee for this procedure. The fee is determined by the value of the assets distributed under the Will.

8) **What Is An Executor?**

An Executor (or Executrix if she is a female) is the adult individual and/or institution (e.g. a bank or a law firm) designated in a Will by the testator or testatrix to manage and ultimately distribute the assets according to the provisions of the Will. Usually the adult individual is a relative or a trusted friend of the testator. The executor is entitled by law to a fee for his services.

9) **What Purpose Do The Witnesses To A Will Serve?**

The witnesses attest to the fact that the testator physically signed the Will himself in their presence and that he was mentally competent and aware of the extent of his assets when he signed the Will. The witnesses **do not** read the Will.

10) **What Kind Of Assets Or Property Can Be Conveyed Through A Will?**

**Almost** anything you own or have control over can be conveyed by Will. (See Question 12 for what cannot be conveyed by Will.) Generally, these assets fall into three categories: **Real Property** (e.g. land, a house, a lease on property, etc.) called a "devise"; **Money** (including cash, stocks, bonds, savings bonds, accounts, etc.) called a "legacy"; and **Personal Property** (including furniture, cars, jewelry, books, etc.) called a "bequest."

### 11) What Assets Cannot Be Conveyed In My Will?

Any assets which are owned in joint name (e.g. joint bank accounts, real estate owned as joint tenants), assets owned with right of survivorship, life insurance policies or other property with a specific, designated beneficiary (e.g. IRA's Retirement Plans, "In trust for" bank accounts) cannot be conveyed by a Will.

### 12) To Whom May I Convey My Assets In My Will?

You can convey your assets to any person (family, friends, acquaintances, etc.), any charity or any institution you desire.

### 13) What Was A Codicil?

Codicils are no longer used in New York State. They were documents used to make changes in old Wills.

### 14) How Do You Get A Will Out Of A Safe Deposit Box After The Testator's Death?

It is the best practice to not put your Will in a safe deposit box. However, if it is in the testator's safe deposit box when he dies, a family member or friend with an interest in the Estate must apply to the Surrogate's Court for an Order to Search the Safe Deposit Box. The Will is removed and brought to the Surrogate Court to begin the Probate process. Nothing else may be taken out of the box. Keep your Will in a fireproof box in your home or give it to a trusted friend or relative for safekeeping.

### 15) I Am Not Wealthy. Do I Still Have An Estate?

Yes, you do. At the time you pass away, everything you own (your house, your car, bank accounts, securities, jewelry, etc.) whether you are wealthy or not, is called your Estate. Your Estate comes into existence automatically once you pass away. To be sure that your Estate is distributed to the people you want, a validly executed Will is absolutely required.

### 16) Who Pays Estate Taxes?

Federal and State Estate taxes (sometimes called "death taxes"), if any are due, are paid out of the Estate before it is distributed. Estate taxes are due only if your Estate is worth more than \$1,000,000 (this will increase gradually to \$3,500,000 by the year 2009.) Consult your attorney about how to draft your Will to minimize any estate taxes.

### 17) Are There Any Other Taxes Which An Estate Might Have To Pay?

Yes, there may be. This depends upon whether any of the assets within the Estate earns any money (e.g. the bank accounts earn some interest or an asset is sold for more than it was worth on the day the decedent passed away.) These earnings are subject to estate income tax.

### 18) What Is Estate Planning?

Estate Planning is the process of drawing up a Will and arranging your assets so that, when you pass away, the minimum amount of estate taxes is payable and your Estate is managed and distributed as and when you want it to be. Your attorney can assist you in making estate plans.

### 19) What Is Medicaid Planning?

If you have a loved one who is eligible for or already on Medicaid, you may wish to leave this person something in your Will. However, unless your Will is drafted in a very precise and particular manner, Medicaid will be able to claim this legacy. Consult your attorney about how to make Medicaid exempt bequests.

### 20) Besides A Will, What Other Documents Make Up A Complete "Planning For The Future" Package?

There are two other documents which should be considered: a Durable Power of Attorney and a Health Care Proxy. The Durable Power of Attorney appoints a trusted person as Agent and gives him or her the authority to act in place of you for the purposes stated in the document. Usually, the Agent is to act when you are incapacitated or unable to act for yourself. The Health Care Proxy enables a competent adult to appoint someone he or she trusts to make all health care decisions for him or her when he or she is unable to make these decisions for himself or herself. In New York State, the Health Care Proxy takes the place of a Living Will.

#### LAW OFFICE LOCATIONS:

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