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Six Steps to Create Your Will

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Six Steps

1. Understand what a will is and if you need one
2. Name the Personal Representative
3. Name the Children's Guardian
4. Name the Children's Trust Trustee
5. Decide who gets what
6. Proper Execution
7. (BONUS!) Organize and Plan for Non-Probate Assets



Step 1

What is a Will?

- A legal document that serves as your voice after your death
 - Names Guardian for Minor Children
 - Determines how your property will pass
 - Must be properly executed and not handwritten



How does a will work once I die?

- When you die, your estate is probated
 - Personal Representative takes the will to court, gets Letters Testamentary
 - These Letters allow you to marshal the assets of the estate
 - The PR then pays off valid debts and distributes the assets according to the instructions in the will.



What if I don't have a will?

- Washington State has laws that determine how your property will pass
 - According to the laws of Interstate Succession
 - A will is the only place you can validly appoint a guardian for minor children, so if there is no will, the court is left with no direction as to who you wanted to act as the guardian
 - Assets cannot pass to minors outright, go into a locked court account



When Should I Use a Living Trust

- A will is the answer for most, but not all, Washingtonians
 - Probate is efficient and relatively fast
 - Probate allows you to significantly limit amount of time creditors have to claim assets of the deceased- allowing the beneficiaries to inherit with confidence
 - Trusts must be maintained or they do not avoid probate
- A revocable living trust is a good option if
 - you have out of state real estate
 - you have privacy concern
 - you want to avoid probate



STEP 2

Name the Personal Representative

- Job Description
 - Availability: Job takes six months if your estate is organized, over a year if any disputes over assets or the will
 - An attorney can be hired to probate the estate-client is the Personal Representative.
 - Duties: Obtain Letters Testamentary, marshal assets, determine valid debts, pay off debts, distribute assets, close the probate.
 - Pay: nothing, gift, or hourly payment



Ideal Qualities of the Personal Representative

- Trustworthy
- Detail oriented
- Willing and available
- Does not have to be spouse, but as WA is a community property state, spouse always has the right to act as PR over his/her share of community property



Step 3

Name your Children's Guardian

- As parents, you can ensure that in the event of your death the right guardian is chosen to take care of your children.
- Courts will look to your nomination when determining who will act as the guardian of your children.
 - Courts give great deference to your nomination .
 - Will appoint that person absent determination that they are unfit to serve.
- If you have not made a nomination, a court will gather information to make the decision on its own.
 - May not ever fully understand family dynamics, personal histories, or your own parenting preferences when coming to its decision.



When choosing your children's guardian, consider:

- Age and health
- Location
- Personal value system
- Parenting philosophy
- Guardian's family dynamics



Step 4

Name Your Children's Trust Trustee

- Do you need a children's trust?
 - Bequests outright to children under 21 go into a blocked court account
 - Giving it to the guardian outright is not the best option; makes assets available to judgment and misuse
- Several great benefits to using this trust
 - Cost effective compared to a Living Trust
 - Only comes into existence if needed: Children are under set age; Both parents have passed away



How does a Children's Trust work?

- The trust is funded with the assets of the estate of the parents as well as any other assets that were directed to the trust (life insurance proceeds, retirement accounts, etc.).
- Once funded, the trustee will make distributions according to your wishes as set forth in the trust agreement.



How are trust assets used?

- Trust assets are spent on raising the children and covering their education and other fundamental needs.
- Parents can set parameters for how liberally or stringently the named trustee may use the trust assets.
- After the children are raised, parents can determine how their children will receive their residual inheritance.
 - Option to stagger receipt of inheritance
- Spendthrift provisions in a children's trust to allow the trustee to delay distribution of the trust assets.
 - Substance abuse
 - Receipt of government benefits due to long term disability



Job Duties of your Children's Trust Trustee

- Trustee is essentially fiduciary for the children, needs to be impeccably honest, good with money management and willing to take on the job.
- Can be long term job depending on age of children
- Manage and distribute assets of trust for the health, education, maintenance and support of your children
- Acts as a good check to the guardians requests for spending
- Guardian and trustee are two large jobs, prefer to have two separate people act in these roles as they require very different skills



Step 5

Decide Who Gets What

- Your probate property can pass using four tools:
 1. Tangible Personal Property List
 2. Specific Bequests
 - Paid before Remainder Bequests
 3. Remainder Bequests
 4. Debts dealt with through Creditor Claims Notice Procedure
 - Valid debts are paid prior to distributions



Step 6

Proper Execution

- Wills must be executed properly to be valid
- Rules are there for good reason
 - Will needs to be typed
 - Testator needs to have capacity
 - Understand extent and nature of bounty
 - Testator is only person who can change or execute will
- Need two witnesses
 - Over 18
 - Not a beneficiary under the will
 - competent
- To avoid a march into court to prove the will- execute a declaration or affidavit of witnesses



(BONUS!) Organize and Plan for Non-Probate Assets

- Probate assets: anything you own that does not have a beneficiary designation
- Non-Probate Assets: anything you own that does have a beneficiary designation
 - Life insurance
 - Retirement accounts
 - Bank accounts with designated Pay on Death or Right of Survivorship



Update your Beneficiary Designations

- Make sure that your beneficiary designations match your estate plan
 - Name Trustee of the Children's Trust as contingent beneficiary if applicable
 - Make sure all accounts reflect current wishes