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## MAKING A WILL IN VIRGINIA

### 1. WHAT IS A WILL?

A Will is a written statement signed by you setting forth how you would like your property to be distributed after you die.

### 2. WHO MAY HAVE A WILL?

In Virginia, any person may make a Will who is:

- A) at least 18 years of age; and
- B) mentally competent.

### 3. DO I NEED A WILL?

Not everyone needs a Will. However, if you own property, no matter how small of an amount, or value, a Will insures that your wishes are carried out about who receives your property after your death. Here are some other reasons for having a Will:

- A. Provide for the payment of bills after your death.
- B. Name an alternative beneficiary in case your primary beneficiary dies before you.
- C. Appoint an Executor (someone to manage your estate after you die).
- D. Nominate a guardian for minor or disabled children.

### 4. WHAT PROPERTY DOES A WILL CONTROL?

A Will controls only what is called the "probate estate." The probate estate consists of any property you own at the time of your death which remains after the payment of certain debts, allowances, and expenses, with some limitations. For example, the probate estate does not include property you own "jointly with right of survivorship." This typically includes joint bank accounts and homes owned by husband and wife. The joint owner who survives you automatically becomes the sole owner of this kind of property. The probate estate does not include insurance policies which name a beneficiary. The beneficiary gets the insurance proceeds regardless of what your Will says, unless you name your estate as the sole beneficiary on the policy. The probate estate is the only property subject to the probate process.

## **5. WHAT WILL HAPPEN TO MY PROPERTY IF I DIE WITHOUT A WILL?**

If you die without a Will, Virginia has a law that directs how your property is to be distributed, without consideration of your wishes or intent. Under the law your property goes to your closest relatives first. For example, if you are married at the time of your death everything goes to your surviving spouse (unless you had children by a prior marriage then 2/3 goes to all the children and 1/3 goes to the surviving spouse). If there is no surviving spouse then everything goes to your children or grandchildren. There are several more steps that set out increasingly distant relatives as beneficiaries which includes parents and siblings. If there are absolutely no relatives to be found then your property will go to the state.

## **6. CAN I WRITE MY OWN WILL?**

In Virginia, you may write your own Will if it is ENTIRELY in your own handwriting with your signature and the date at the end. If a Will is in your own handwriting, it need not be witnessed. It is strongly recommended that you DO NOT use pre-printed Will forms since these MAY NOT BE VALID if they are not properly executed. To avoid the possibility of having your Will declared invalid, it is best to get the advice of an attorney.

## **7. MUST MY WILL BE WITNESSED AND/OR NOTARIZED?**

If your Will is not entirely in your own handwriting it must be witnessed by two competent witnesses both present at the time of signing. Legally, a Will does not have to be notarized, but it is highly recommended because a notarized Will is presumed valid in Virginia.

## **8. TO WHOM MAY I LEAVE MY PROPERTY?**

In general, you may leave your property, or any part of it, to any person or organization you desire. For example, you may chose to leave property to a relative, friend, church or branch of government.

However, you should be aware that if you are married at the time of your death your surviving spouse may be entitled to a portion of your estate regardless of the provisions in your Will. If you chose not to name your spouse in your Will you should consult an attorney first.

## **9. CAN I LEAVE MY PROPERTY TO CERTAIN PERSONS SIMPLY BY PUTTING LABELS ON MY PROPERTY OR KEEPING A LIST OF PERSONAL ITEMS THAT I WANT CERTAIN PEOPLE TO HAVE?**

Using labels to name the persons to whom you want to give certain items, will have no legal effect. However, Virginia law now allows an individual to have a separate written statement or list of tangible personal property naming who is to receive the property. The only requirements are that the Will must refer to the list and you must sign the list.

## **10. WHAT IS AN EXECUTOR?**

An executor is a person named by you in your Will to distribute your property and carry out your wishes after your death. A female is called an "executrix". If you do not name an executor in your Will, the court will appoint an "administrator" who does the same thing as an executor.

## **11. WHO CAN BE MY EXECUTOR?**

You may name anyone you wish to be your executor so long as they are over 18 years of age and mentally competent. You may also elect to have more than one executor or co-executors. However, the person you name should be someone you know and can trust to carry out your wishes. A bank trust department can also be your executor.

Virginia residency is no longer a requirement for an executor. If there is no one in Virginia, you can name an out of State resident. However, if there is no in state co-executor you will not be able to waive bond (bond money to insure the estate). Also, at the time of probate, a Virginia resident must still be appointed to accept service of process for the estate. For these reasons, it still may be a good idea to name a resident as co-executor.

## **12. WHERE SHOULD I KEEP MY WILL?**

Your Will should be kept in a safe place where it can be found easily after your death. It is a good idea to tell your Executor where you keep your Will. A bank safety deposit box is all right to use in Virginia, but is not recommended if the bank is outside of Virginia, because in some cases, the box could be sealed upon your death. In many Virginia counties or cities, you may also file your Will for safe keeping in the Clerk's office of the local Circuit Court for a small fee.

## **13. CAN I CHANGE MY WILL AFTER I WRITE IT?**

You change your Will either by:

- A. Revoking it and writing a new one; or
- B. Writing an amendment to the will called a "codicil."

Both acts require certain formalities, so it is not a good idea to attempt a change in your Will without consulting an attorney. If your circumstances or your wishes change radically after you write your Will, then you should make a new one. It is not a good idea, however, to change your Will very often. You should think carefully about it the first time.

## 14. WHAT IS PROBATE?

Probate is the legal procedure in which your debts are paid and the remaining property is distributed to the beneficiaries named in your Will. The process begins when your Will is submitted to the Clerk of the Circuit Court, who declares it to be valid. It is then placed on public record and the executor you appointed in your Will is ordered to carry out your wishes. When your estate is finally settled, your executor files a final accounting or, in some cases, a simple affidavit with the court.

If the value of your estate is very small, you may not have to go through any formal probate proceeding since Virginia has a special procedure for the administration of small estates. You should consult your local Circuit Court Clerk, or an attorney, to determine this.

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### IMPORTANT

Everyone's situation is different and most every rule has exceptions. The information above is intended only for general informational purposes in the State of Virginia. It may not apply to your individual situation. Therefore, it is advisable to discuss your particular situation with a lawyer.

If you need legal help, call the Legal Services Branch that serves the city or county in which you live to make an appointment. To be helped by Legal Services, you must meet financial eligibility requirements. These guidelines will be explained to you when you call.