

Why do I need a Will?

And other frequently asked questions about Estate Planning.

1. Why do I need a Will?

A Will indicates to whom your property will pass upon your death, and how the property will be distributed. Most people have an idea as to who they would like to distribute property to upon their deaths, and a Will is the instrument that allows you to realize those ideas. No matter the size of your estate, a Will is an important document. A Will is the only documents in which you can name Guardians for your minor children. If you have a large estate, a Will can provide estate tax savings. If you are benefiting a person who is a minor or disabled, you can establish a trust for their benefit in your Will which will allow a responsible person to decide how to use the money you have left for their benefit.

2. What happens if I die without a Will?

Most people aren't aware of this, but if you haven't executed a Will, the State of New Jersey has one for you. Dying without a will is called "intestacy". If you die without a Will, or "Intestate", the statutes of the State of New Jersey will determine who administers your estate and to whom the property will pass. Many people are surprised by what the intestacy laws say. If you are married and have children, your property will not automatically pass to your spouse. Instead, your spouse will receive the first \$50,000, and the balance will be split between your spouse and your children. If your children are minors, the assets will be placed in special custodian accounts with a person the court names as custodian. Your spouse may need to account to the court as to how he or she spends the share that has passed to the children. This is usually not what the Intestate person would have intended.

3. What is a "Living Will"?

A so-called "Living Will" is a document that states what type of medical care you would like to receive should you become terminally ill and not able to make decisions on your own accord. Unlike a regular will, it is used when you are alive, not upon your death. In our Living Wills we ask you to consider a variety of medical situations and indicate how you would like to be treated if that situation were to arise. A companion document to a Living Will is a Health Care Proxy or Health Care Power of Attorney. In this document you name someone to make medical decisions for you in the event you are unable to do so yourself. You do not need to be terminally ill for the Health Care Proxy to take effect, just unable to make a decision for yourself. You should make sure your doctor has a copy of your Living Will and Health Care Proxy. We also recommend you keep copies in your nightstand, glove compartment, and take a copy on vacations with you, so that your wishes will be known in the event of an emergency.

4. Do I need a Power of Attorney?

Yes. A Power of Attorney is an extremely important document. It allows a person that you name to make financial decisions on your behalf. A Power of Attorney can be limited, as in the case where you give the attorney the power to close on the sale of your home, or general, where your attorney-in-fact (the person you empower under the Power of Attorney) can take any and all actions with your finances that you would be able to take. A Power of Attorney can either take effect immediately and continue to be effective if you become incapacitated (a “Durable” Power of Attorney) or become effective once you become incapacitated (a “Springing” Power of Attorney). We generally recommend a Durable Power of Attorney so there is no question of if the document is effective or not – with a Springing Power of Attorney the Power Holder would need to show proof, acceptable to the third party, of your incapacity.

5. What is a Trust?

A trust is an arrangement where one person, the Trustee, holds the managerial power over certain assets for the benefit of another person or persons, the Beneficiaries. The Grantor or Settlor is the person who creates the trust. The Trustee is not allowed to use the assets in the trust for his or her own benefit in the capacity of the Trustee. All of the assets must be managed and distributed for the benefit of the Beneficiaries. A trust is very flexible in that the Grantor may also be a Trustee or Beneficiary, and a Beneficiary may be a Trustee. There are many different reasons for creating a trust, either while you are alive (an “inter-vivos trust”) or in your Will (a “testamentary trust”). Some of the most common reasons to set up a trust are to provide for minor or disabled beneficiaries, to make gifts to beneficiaries where there is concern about the beneficiaries controlling the assets, to protect assets from creditors, and to take advantage of certain exemptions and exclusions in the gift and estate tax laws.

6. What is a Living Trust or a Revocable Trust?

A Living Trust or a Revocable Trust is a special type of trust where the Grantor is both the Trustee and Beneficiary during his or her lifetime. A Revocable Trust is essentially a Will substitute, as it will control the distribution of your assets upon your death instead of your Will. All your Will says is “distribute any assets passing through my Will to my Revocable Trust”. There are specific situations where it is appropriate to use a Revocable Trust. One is if you live in a state with a lengthy and expensive probate process – luckily New Jersey has a very simple and inexpensive probate process (“probate” is the process of offering a document as your Will and the court agreeing that it is your Will and should control the distribution of your assets). Another reason is privacy – a Will is a public document which a Revocable Trust is not. A further reason is due to the types of property that you own. For instance, real estate owned in another state is subject to a probate proceeding just for the real estate in that other state – this can be expensive and time consuming. If the Revocable Trust owned the real estate instead of you, the additional probate process would be avoided. Also, it can be

beneficial for IRA or Qualified Plan assets to be payable to a trust to achieve some tax savings and control the distribution of the IRA or Qualified Plan to your beneficiaries.

7. Will a Will or Revocable Trust help me save taxes?

Maybe. Either a Will or a Revocable Trust can be designed to help you reduce the tax burden on your estate – there is no tax advantage to one versus the other. If your Will or Revocable Trust has been drafted to reduce taxes, it is important that you hold title to, or own, your assets in the proper way to take advantage of the tax savings created in your estate planning documents. Your Will distributes only property titled in your sole name with no beneficiary. Joint property passes to the joint property holder, outside your Will. Property with a named beneficiary, such as an IRA, insurance policy, or POD bank account, passes to that named beneficiary on your death, outside of your Will. Accordingly, you can have the most tax friendly Will in the world, but if none of your assets are distributed through it, it won't save you any taxes.

8. How much does a Will cost?

It depends. The fees for creating an estate plan can range from a few hundred dollars to a few thousand or significantly more. It all depends on what kind of assets you have, who your beneficiaries are, and most importantly, what your goals are. Every situation is different. During an initial consultation, one of our attorney's sits with the client and reviews their assets, beneficiaries and goals. We then make recommendations based on that client's unique situation. Many times we are able to offer a range of flat fees for our services. Other times our services are billed on an hourly basis. At the conclusion of each initial consultation we follow-up with a letter to the client outlining our recommendations and stating our fees.

9. How do I contact someone about creating an estate plan?

If you need to create an estate plan, or update your existing one, we would be happy to review your situation and recommend a plan of action. You should first contact [Deirdre R. Wheatley-Liss, Esq.](#) in our Tax, Trusts and Estates and Elder Law Department to find out what to expect from an initial consultation. You can either send an e-mail to dwheatley@feinsuch.com or call her at 973-538-4700 x198. You can then download our Estate Planning Questionnaire Packet at www.feinsuch.com/library/estate_questionnaire_packet.pdf. When you complete the package and mail it in, we will contact you to set up an appointment. We look forward to being of service.