

Things Not to Include in a Will

Documents Have Limitations, and Some Language Is Not Suitable

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A will is an essential estate-planning document that everyone should have. If drafted properly, your will serves important purposes such as nominating a personal representative to administer your estate according to your wishes and designating guardians for minor children. However, a will has a number of limitations, and certain items and language are not suited to be included there.

Here are some examples:

Property Held in Joint Tenancy

Property owned by two or more joint tenants is automatically distributed to the surviving joint tenant(s) by the operation of law. Therefore, upon your death, the joint property passes directly to the surviving joint tenant(s), despite will language to the contrary.

Property in a Living Trust

Providing language in your will to distribute property that is already delegated to someone by a living trust is inconsistent. The property in the living trust is automatically distributed to the beneficiaries, as directed by the living trust, and is managed by the trustee(s) set forth by it. In the event that you wish to make revisions to the beneficiary provisions, you must do so through the living trust and not through your will.

Accounts with Designated Beneficiaries

Certain assets, such as financial accounts and life insurance, are often distributed to beneficiaries pursuant to a designated beneficiary form and cannot be distributed to someone else through a will. To revise a named beneficiary, you should complete a

subsequent beneficiary-designation form provided by the financial or insurance company.

Nomination of Joint Guardians

The ability to nominate a guardian for minor children is a significant benefit of a will. However, nominating joint guardians to serve together is not always in the child's best interest. If you nominate a guardian



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Funeral Instructions

It is not proper to leave your funeral, memorial service, and/or burial instructions in a will, since a will is oftentimes reviewed after the funeral occurs. It is better practice to have a meaningful conversation with your loved ones, leave a letter of instruction, and/or include language within your healthcare proxy, as that document is oftentimes reviewed immediately prior to death. You may also prearrange your wishes with a funeral home.

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and his or her spouse jointly, each will have equal rights to the child's care. In the event of a divorce, each proposed guardian will have the legal right to be the guardian, which right may become contested and impede the child's care.

Provisions for Pets

Under Massachusetts law, you cannot distribute funds in a will directly to a pet. A pet is considered to be personal property, not a person or entity, and cannot receive funds. If you attempt to leave funds directly to your pet in your will, the distribution language would be null and void, and those funds would pass to the beneficiary inheriting the residue of your estate. The alternative to distributing assets to the pet in a will is to create a Massachusetts pet trust.

Language to Eliminate or Minimize Estate Taxes

Assets distributed by a will are still subject to estate taxes. In the event that you have a taxable estate, which is currently defined as having assets in excess of \$1 million upon death for Massachusetts purposes, you may wish to consider a trust specifically designed to eliminate or minimize estate-tax obligations.

Provisions for Those with Special Needs

Providing assets for people with disabilities requires special estate planning, and a will is not the appropriate document to distribute such assets. There are certain types of trusts, such as special or supplemental-needs trusts, that specifically address the

management of the specific needs of a disabled loved one.

Information You Wish to Keep Private

Upon your death, a will is filed at the requisite probate court and is available to the public. If this is a concern, you may wish to contemplate planning with a trust. A trust is a private document and is not available to the public.

Closing Thoughts

It is a common misconception that having a will automatically causes you to avoid the probate process. This is incorrect. Financial assets that are distributed through a will are required to be adminis-

tered through the probate process. Probate is the court's supervision of the process that transfers the legal title of property from the decedent to his or her beneficiaries. If you wish to avoid probate, you may designate beneficiaries, hold assets jointly, or create and fund a trust.

A will is a necessary document that, if drafted properly, can save your loved ones time and expense as well as provide you with peace of mind. However, if drafted improperly, there is the very real potential that the distribution of assets and final instructions will not be administered as you wished. The advice of an experienced estate-planning attorney will greatly assist you in avoiding the pitfalls of an incorrectly drafted will. ❖

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