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LAST WILL AND TESTAMENT

of

JOHN DOE

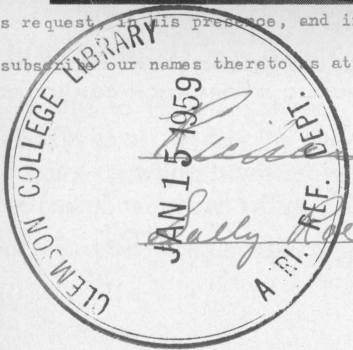
THE STATE OF TEXAS )  
(  
County of Brazos )

KNOW ALL MEN BY THESE PRESENTS

That I, John Doe of the County of Brazos and State of Texas, being in good health, of sound mind and disposing mind and memory above the age of twenty-one years, do make and publish this my will and testament, hereby revoking all wills by me at any time heretofore made.

First. I direct that all my just debts shall be paid.  
Second. I give to my wife, Mary Doe, all property, both real and personal, that I may own hereafter, to have and to hold unto her as independent executrix. No action shall be had in this regard until the recording of this, my will, and the appraisal of and list of my property.  
This I make and publish, and do hereby subscribe my name, this 15th day of January, 1959, at the County of Brazos and State of Texas, in the presence of Richard Roe and Sally Roe.

The above instrument was read to me and signed and subscribed by me in the presence of the above named witnesses, and we, at his request, in his presence, and in the presence of each other sign and subscribe our names thereto as attesting witnesses.



Why Make a Will?

*This publication was written to help families understand the importance of making a will. It attempts to answer some of the general questions about wills. For specific advice, consult your attorney.*

APPROVED BY THE STATE BAR OF TEXAS  
PUBLIC INFORMATION COMMITTEE

# Why Make a Will?

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**DO YOU KNOW WHAT WOULD HAPPEN** to your property if you died tomorrow? If a person dies, leaving no will, his estate will be distributed as prescribed by law. If a valid will is left, the property goes in accordance with the provisions of the will.

## Advantages of Making a Will

- Your property can be distributed in line with your wishes.
- Cost and time for settling the estate may be reduced.
- An executor can be named.
- A guardian may be designated.
- A testamentary trust may be created.
- Family quarrels may be avoided.

## Cost of a Will

Authorities recommend the use of an attorney in drafting a will. Considering its importance, the will is a relatively inexpensive legal service. Since legal services are on a professional basis, there is no set price. The charge depends upon the complexity of the will, but unless there are complicated situations the fee will be relatively small.

## What Happens if no Will Is Left

When a person fails to leave a will the property is distributed according to Texas laws of descent and distribution. The laws designate the heirs to whom ownership of the property is transferred, and the fractional share which each person acquires.

The division depends on whether the property is *separate* or *community* estate.

The community property of an intestate under Texas law goes entirely to the surviving spouse if there are no children; otherwise, the surviving spouse gets one-half and the children or their descendents get the other one-half.

When an intestate with separate property leaves no children, the surviving spouse takes all the personal property and one-half of the real property. Other heirs get the other one-half of the real property. If the decedent leaves a surviving spouse and children, the surviving spouse takes one-third of the personal property and a life estate in one-third of the real property. The children at once take two-thirds of both the real and personal property. Upon the death of their other parent, they acquire the other one-third of the interest in the real property.

When the decedent with both separate and community property leaves no surviving spouse but does leave children, the latter inherit all. In both cases, when a deceased child leaves a descendent, the latter would receive his share.

The law sets forth in further detail how property is distributed among other relatives when the intestate leaves no surviving spouse or children or their descendents. If the decedent leaves neither a will nor heirs, his property goes or "escheats" to the state.

## **Who Can Make a Will**

A person 19 years old and of sound mind can make a valid will. If he is married or has been married, or is a member of the armed forces, he can make a will regardless of age.

## **Types of Wills**

### **Holographic Will**

A holographic will must be wholly in the handwriting of the person making the will. It is not well to use this form because of general lack of knowledge of proper legal language. Likewise, it is difficult to create an independent executorship without bond, a life estate or a trust. These points are often the reason for getting legal advice.

### **A Written Witnessed Will**

A written witnessed will may be prepared on a typewriter or in the handwriting of any person, but it must be signed by the

testator in the presence of at least two persons of sound mind over 14 years of age. These two witnesses also must sign the will.

### **Nuncupative Will**

A nuncupative will is made orally and disposes of personal property only. It must be made by the testator in the time of his last sickness at his home or where he has resided for 10 days immediately preceding the date of this will, (except when he is taken sick away from home and dies before he returns). It must be proved by three credible witnesses, if the value of the property exceeds \$30.

### **Mutual Reciprocal Will**

A mutual reciprocal will is one where the parties, usually husband and wife, make a joint will. Many attorneys discourage this type of will because circumstances often change the wishes of one or both parties.

## **Execution of a Will**

In order for a will to be valid, the maker must have executed the will free from undue influence and duress. In addition, the will must have been drawn to comply with requirements of the law. For example, two witnesses are necessary. They must be more than 14 years of age and should not be beneficiaries.

## **When to Rewrite or Change a Will**

A person should review his will whenever any change has occurred in his own life situation or that of his heirs. A will may be changed in several ways. The old will may be destroyed and a new one written. An instrument canceling a will may be executed. Often changes are made in wills by adding a codicil (a supplement) to the existing will.

## **Where to Keep Wills**

A will should be put in a safe place. This may be in a safe deposit box in a bank. Some other member of the family also should have access to this box. A will may be intrusted to an attorney or to a beneficiary under its term. It may be placed in a sealed envelope and deposited with the county clerk. He will not release it except to the maker or the persons whose names and

addresses are written on the envelope. Usually these are the persons to be notified upon his death.

## **Contesting Wills**

If wills have been prepared properly by legally trained people, the likelihood that they can be "broken" is remote. Wills are broken most commonly on the grounds that the instrument is not genuine or that it does not meet requirements of the law as to witnesses. Wills are broken sometimes because the maker was of unsound mind. Another reason used frequently for breaking wills is through proving that the maker was unduly influenced or coerced.

## **Minimum Cost of Administering Wills**

In administering an estate, certain requirements should be met:

1. The will must be filed, proved and probated.
2. An executor or administrator must be appointed.
3. An inventory and appraisal of the property must be made.
4. A list of claims against the estate must be filed.

Time and expense may be saved by naming an independent executor without bond and by providing that, when the essential requirements just enumerated are met, the estate shall be administered independently of the probate court. Further expense may be saved by providing that no bond shall be required. Such provision would be advisable only when the testator has utmost confidence in the ability and integrity of the executor or guardian.

## **Probating a Will**

When death comes to a testator, the will must be probated to make it effective. The county judge is the probate officer.

## **Inheritance Rights of Adopted and Illegitimate Children**

Legally adopted children have the same inheritance rights as natural children of the decedent.

Inheritance rights of illegitimate children have been broadened so that they may now inherit in the same fashion as legitimate children, except that they cannot inherit from their father unless he has recognized them. The safest practice under these conditions would be for the father to adopt the child legally by formal adoption proceedings during his lifetime.

## Estate and Inheritance Taxes

### Federal Estate Taxes

The federal estate tax is imposed on the transfer of property by the decedent. The tax rates are levied on "taxable estates." A determination of the estates which fall into this category is made by deducting from the total value of the gross estate the total amount of authorized deductions and a \$60,000 specific exemption which is allowed on all estates. This difference constitutes the "taxable estate." Unless the value of the gross estate materially exceeds \$60,000, it is unlikely that the estate would be subject to the federal estate tax.

### State Inheritance Taxes

Inheritance taxes are levied by the State of Texas on the amount inherited by each person instead of on the total estate. Exemptions depend on the "class" or generally the relationship of the person who inherits the property. For example, there is an exemption of \$25,000 for a husband or wife or child of the decedent. The exemption for an aunt or uncle is only \$1,000.

## DEFINITIONS

*Administrator*—A person or institution appointed by the court to administer the estate of a person who died without leaving a will, or the estate of a person who died with a will where the testator did not properly name an executor or the executor so named failed or refused to qualify.

*Beneficiary*—One receiving benefit or advantage from a will, insurance policy, trust, etc.

*Codicil*—An addition or a supplement to a will, made at a later date under the same regulations required for the validity of the original will.

*Community Property*—All property acquired by man and wife after marriage, with the exception of that acquired by gift, devise or descent.

*Decedent*—A deceased or dead person.

*Devisee*—A person named in a will to receive real estate.

- Escheats*—Property goes to the state when neither a will nor heirs are left.
- Estate*—All the property a person owns, both real and personal.
- Executor*—Persons or institutions named in the will to pay debts and distribute the property.
- Fee Simple*—Absolute ownership, with right to dispose of the land by will or deed.
- Holographic Will*—A will written wholly in one's handwriting.
- Intangible Personal Property*—Life insurance policies, bank accounts, shares of stocks, bonds and negotiable notes.
- Intestate*—When one dies without leaving a will.
- Laws of Descent*—The property of a deceased citizen of Texas, who leaves no will, is distributed according to laws made to meet the ends of impartial justice.
- Legatee*—A person named in a will to receive personal property.
- Mutual Reciprocal Will*—A joint will made by two or more parties (usually husband and wife), each naming the other as a beneficiary.
- Nuncupative Will*—An oral will made in one's last illness. It must be put in writing within 6 days or be given as testimony in court within 6 months, after speaking the will.
- Personal Property*—Everything a person owns except his real estate. Anything that you own that is movable.
- Probate*—A necessary court proceeding resulting in a judgment which, when recorded, vests the title in the beneficiaries in the same way that a deed does. The will then becomes effective.
- Real Property*—Land or real estate including the buildings on the land.
- Separate Property*—Acquired by either man or wife before marriage, or by gift, descent or devise after marriage.
- Testamentary Trust*—A testamentary trust in a will sets up an arrangement which affords wide flexibility in the management of an estate. This may include making advancements as needed for education or support of beneficiaries and determination of time and manner of distributing proceeds.
- Testator*—A person who makes a will.
- Will*—A legal document in which a person states how he wishes his property and possessions to be distributed after his death.