

You might want to give serious consideration to naming a bank which has a trust department as the executor because they have people especially trained to do this work.

### HOW MUCH DOES A WILL COST?

Surprisingly little for an uncomplicated Will -- probably no more than what an attorney would charge for making one appearance in the probate court. But if you die without a Will, your spouse's attorney (or the attorney for the court-appointed administrator) will more than likely have to make many such appearances.

### WHO SHOULD PREPARE MY WILL?

An attorney knowledgeable about Wills and Estate Planning.

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**"WHERE THERE'S A**

**Will**

**THERE'S A WAY"**

**WHY YOU NEED A WILL**

### WHY DO I NEED A WILL?

A. Because, without a properly drawn Will, you will not get the chance to say where your property goes -- instead the State of Texas will make this decision for you!

B. Because, without a properly drawn Will, if you have minor children, you forfeit the right to name the person you would want as their guardian and you leave the decision to a judge.

C. Because, without a properly drawn Will, you forfeit the right to have your estate administered by a person you would have chosen and instead a judge will appoint whomever he believes is qualified -- which could be a creditor!

D. Because, without a properly drawn Will, you forfeit the right to an efficient, cost saving independent administration and instead a court-supervised dependent administration may be required which is expensive, time consuming and burdensome.

E. Because, without a properly drawn Will, you forfeit the right to take advantage of estate tax saving opportunities, thereby exposing your estate to significant estate and inheritance taxes.

### WHAT HAPPENS TO MY PROPERTY IF I DIE WITHOUT A WILL?

It passes according to the laws of the State of Texas (what lawyers call the "law of intestate succession"). If you are married and have community property (generally property which you and your spouse accumulated during your marriage), each spouse owns an undivided  $\frac{1}{2}$  interest in that property. If the deceased spouse's children are also the children of the surviving spouse, then the deceased spouse's community property will pass to the surviving spouse. However, if all of the children of the deceased spouse are not children of the surviving spouse, then the deceased spouse's community property will pass to his children--not to the surviving spouse.

If the deceased spouse had separate property (prop-

erty that he or she owned before marriage or which, while married, was received as a gift or as an inheritance) the law of intestate succession requires that separate real property (eg: house and lot; family farm or ranch, etc.) go  $\frac{2}{3}$  fee simple to the decedent's children with the surviving spouse receiving only a  $\frac{1}{3}$  life estate -- the  $\frac{1}{3}$  remainder interest at the spouse's death going to the children. In case of separate personal property, the decedent's children receive  $\frac{2}{3}$  and the surviving spouse receives only  $\frac{1}{3}$ .

### WHAT IF I HAVE MINOR CHILDREN -- WHAT CAN A WILL DO FOR THEM?

It can provide a tremendous degree of security for them and peace of mind for you! With a Will you can provide, if both you and your spouse are deceased, that your estate will be held in trust (with a trustee you name) for their maintenance, support and education until they are old enough and mature enough to handle the property -- rather than simply turning it over to them when they turn eighteen (18) which the law, otherwise, requires.

### WHO CAN MAKE A WILL?

- a. Anyone who is of sound mind and
- b. Is 18 years of age (or is now or has been lawfully married) or
- c. Is in the armed forces, reserves or in wartime service.

### WHAT HAPPENS WHEN I DIE -- WHAT DOES PROBATE INVOLVE?

Unlike most states, Texas allows you to have an independent administration. But you get this only if you have a properly drawn Will. With an independent administration the person you have named as your independent executor (the representative of your estate) will usually hire an attorney. The attorney will prepare an application to probate the Will. The executor will accom-

pany the attorney to court and will testify as to the fact that the person has died; that the Will was signed when the testator was of sound mind; that the Will is his last Will and was never revoked; and that the executor desires to be appointed as the executor of the estate. If the judge finds everything in order, he will order the Will admitted to probate and will order that "letters testamentary" be issued to the independent executor. The independent executor will then publish in a local newspaper a "Notice to Creditors" advising any creditors to present their claims; he will also file an Inventory, Appraisal and List of Claims (basically a list of the assets of the deceased and their fair market value). The independent executor will then be free to "administer" the estate -- that is, he will gather the assets of the deceased; pay any debts of the deceased in a specific order; and then distribute the assets to the persons named in the Will.

### IF I HAVE A WILL, MUST I LEAVE ANY PORTION OF MY ESTATE TO ANY PARTICULAR PERSON?

No. Texas, unlike other states, does not have "forced heirship". This means with a properly drawn Will you can leave your property to whomever you choose. As a matter of fact, by having a Will, you can remember your favorite charity, your church or synagogue or special friend.

### WHOM SHOULD I NAME AS MY INDEPENDENT EXECUTOR?

Quite often a married person will name his or her spouse. Another possibility is an adult child. In any case, the person you name should be someone in whom you have complete trust and confidence -- someone you believe is a good business manager because he or she will have complete responsibility for your financial affairs until your assets are distributed and your estate closed.