

Do I Really Need a Will?

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At some point in your adult life (hopefully) someone has said to you, “you need a will.” Everyone takes this statement at face value and adds it to the list of things one needs to make a responsible adult: health insurance, life insurance, and medical and dental checkups.

But is this true? Do you really need a will? Well, the answer is unequivocally yes but a will is really only a portion of the recipe for basic estate planning. To really cover the bases people really need three documents for estate planning: a durable power of attorney, a living will and a will.

A durable power of attorney or POA is a person allowed to conduct your business if you cannot due to age, illness, accident or any other reason. A POA should be a trusted relative or close friend. The most common choices for POA are spouse, sibling, parent or adult child. A POA remains in place even after the onset of dementia or illness. A POA, like all of these documents, can only be created when a person has the ability to understand and appreciate what they are doing. Delaying the appointment of a POA may result in a person losing the ability to sign and understand these documents. If a person doesn't have a POA and needs this type of help, it's necessary to file a petition for guardianship through the court system which is slow and invasive and results in the loss of fundamental rights that can only be restored through the court. A durable POA can act quickly to care for your legal and personal needs.

The second document everyone needs is a living will. Kentucky has a living will statute that allows a person to direct the type of “life-prolonging treatment and artificially provided nutrition and hydration if a person no longer has decisional capacity, has a terminal condition, or becomes permanently unconscious.” Every person has the right to choose whether they want to be on life support and a living will memorializes that choice. Kentucky's living will statute also allows one to appoint or nominate a health care surrogate who can make medical decisions if a person is incapacitated.

I frequently speak with widows and widowers and spend a great deal of time discussing living wills. I enter these conversations with the expectation that, at least in the abstract, most people do not want to be on life support with no hope of recovery. Kentucky hospitals and medical providers generally honor the decisions of spouses regarding end of life treatment. A problem confronting many widows and widowers is that their adult children have very different ideas about the type of care their mom or dad should receive. A living will allows one to make this important personal choice and not thrust it upon their loved ones. Many people misunderstand the scope of a living will and confuse it with a Do Not Resuscitate Order. An attorney can explain these differences and help ensure that your instructions are clear.

The final document every person needs for basic estate planning is a Last Will and Testament. Do you really need a will? The answer is an unequivocal yes. Having a will allows one to direct how their final affairs are handled and it provides direction to friends and family as to how to dispose of assets. Unfortunately people pass away every day and don't have a will and the choice defaults to the law of the state a person lives in to direct the share and order of inheritance. Dying without a will can result in property being disposed of contrary to one's wishes, increase the cost of estate administration and have unintended consequences and tax liabilities.

Kentucky does allow a person to draft their own will and this is called a holographic will. As an attorney, I can attest that holographic wills are often confusing, sometimes illegible or indecipherable, occasionally omit important assets and are frequently invalid. Online tutorials meant for the widest possible audience frequently omit certain formalities that have a direct bearing on whether a holographic will is valid. Contrary to popular belief, merely having a document "notarized" does not necessarily give it legal legitimacy. Watching a YouTube video on how to create a holographic will is NOT good estate planning.

No one likes to think about end of life decisions but the proper planning and execution of these documents allow control of these issues. With these documents you make the decisions and decide how these issues will be handled and it is a service to your family by ensuring the orderly distribution of your estate.

This article briefly outlines the foundation of a solid estate plan and I hope you will use this information to begin your own estate planning with a qualified estate planning attorney. Often people need advice and planning concerning elder care, trusts, deeds and other legal instruments. I urge you to meet with a trusted attorney to review your personal situation and to seek assistance in crafting an estate plan that will save you and your family money, time and unnecessary hardship.

Submitted by:

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