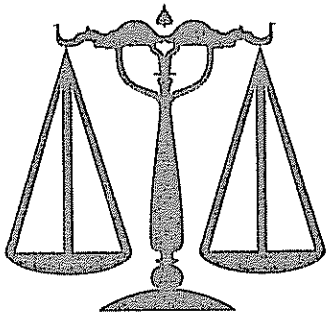
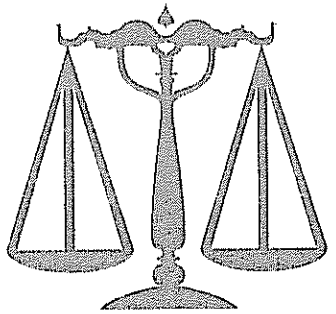
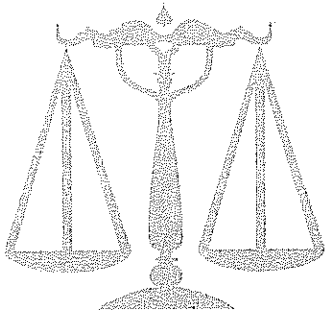
WILLS







WHAT IS A WILL?

A Will is a written document that directs the distribution of both your real and personal property owned by you at the time of your death, appoints someone to care for and distribute that property, recommends the appointment of a guardian for the care of your minor children, provides for asset management, tax savings benefits, and other transfer issues. The laws of the Commonwealth of Kentucky require:

(1) You, the maker of the Will, must be at least eighteen (18) years of age.
(2) You must be competent or of sound mind.
(3) The document must be in writing.
(4) Your name must be subscribed to the document.
(5) If the complete Will is not in your own handwriting, it must be witnessed in accordance with State law.
(6) At your death the Will must be probated in the County District Court where you resided at the date of your death.

WHEN SHOULD YOU MAKE A WILL?

A Will should be planned and executed while the maker is in good health and is not subject to some type of emotional stress. You should not wait until a catastrophe or other compelling reason to make your decision regarding your Will. If you have minor children, you can provide a recommendation to the District Court for appointment of a guardian of the person and perhaps even the property of the minor child.

WHAT IF YOU DIE WITHOUT A WILL?

If you die without a valid Will in Kentucky, as is the case in every other State of the United States, both your personal property and your real property are distributed by a formula provided in the Kentucky Statutes. Many individuals believe without a Will that all of their property would pass to a surviving spouse but that is not the case. Regarding personal property, your spouse would only receive one-half (1/2) of those assets with the remaining one-half (1/2) passing to either children, if there are none; to parents, if there are none; to brothers and sisters, if there are none; and then finally back to the surviving spouse.

Therefore, the surviving spouse would only receive a complete distribution of personal property in the event that the deceased spouse had no heirs. If there were other heirs of the deceased spouse, the surviving spouse would only receive one-half (1/2) of the deceased spouse's interest in personal property.

If an individual does not exercise their legal right to make a Will, the Courts will appoint an individual to supervise the estate administration process and to make distribution of assets. This may not be the preferred option for the decedent.

MAY A PERSON DISPOSE OF THEIR PROPERTY IN ANY WAY THEY WISH IN A WILL?

An owner of real or personal property does have the option of disposing of property by a valid Will. There are statutory protection provisions so that a deceased spouse may not disinherit a surviving spouse relating to marital property.

Likewise joint property with rights of survivorship will pass automatically and not subject to an individual's Will to the surviving co-tenant.

DOES A WILL INCREASE PROBATE EXPENSES?

No. If there is property to be administered or taxes to be paid, or both, the existence of a Will does not increase probate expenses. If there is property, the District Court has jurisdiction and must either pass on the Will or determine who are the legal heirs. Therefore, even if you have no Will, your heirs must go to court to probate your estate.

By your Will, you can waive the requirement of a bond for the personal representative who handles your estate, and thereby save the bond premium expense. By a well-drawn Will, you can sometimes reduce taxes and cut other expenses.

CAN A WILL BE CHANGED?

A Will only becomes effective upon an individual's death. As long as an individual is mentally competent, has a grasp of their assets and the desire for distribution of those assets, the individual may amend or modify their Will. The requirements to amend a Will and the formal execution of that amendment are the same as making a valid Will. In addition, provisions in a Will for the benefit of the spouse will be administered as if the spouse predeceased you in the event there is a dissolution of your marriage.

There are many changes of circumstance that occur after the making of a Will which should dictate the consideration for amendment. Some of those changes are: dissolution of marriage, birth of children or grandchildren, changes in the nature and extent of property owned, and other valid concerns that may require an amendment to your Will in the form of a Codicil.

ARE THERE SUBSTITUTES FOR A WILL?

A Will disposes of your entire property, and unless you have only one parcel of property, there is no substitute for a Will. A few partial substitutes follow:

1. Life insurance is one type of property that passes directly to the beneficiary. A Will has no effect on the proceeds, unless the policy is payable to the estate.
2. Right of survivorship of real property or savings accounts generally goes to the surviving owner, and they get title to the property. A Will has no effect on such property. Joint real property, unlike a Will, can only be changed with the consent of the joint owner. Joint tenancies should be used with a great deal of care, since they may involve gift tax problems and other state and federal tax problems.

IS A WILL EXPENSIVE?

A lawyer charges for a Will according to the time spent in preparing a Will. A few hours of an attorney's time may mean great savings in taxes and probate expenses. Usually, the cost of the surety bond, required by the court for the personal representative to qualify in administering the estate, exceeds the lawyer's charge for making a Will.

WHO SHOULD DRAFT A WILL?

Your attorney should draft the Will. No sensible person would engage "just anyone" to fill teeth or take out an appendix. The proper drafting of a Will involves decisions requiring professional judgment acquired by years of study, training and experience. Only the practicing lawyer can help you avoid the many pitfalls and advise the course best suited for you.