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When there is no Will, the law establishes how a person's estate will be distributed, and the distribution imposed by law cannot and does not take into account the individual's particular desires or the special circumstances which may exist in his or her family.

This could result in an individual's estate being distributed in a way he or she did not foresee, would not have wanted and would never have directed in a Will. With a Will an individual can provide for the unique needs of his or her family, needs that he or she knows of first hand, but which the rigid formula of distribution set by law cannot consider, perhaps a child who needs special care or an aging parent. There are many ways of meeting these needs through a carefully drawn Will, but when there is no Will there is no flexibility.

ADMINISTRATION

With a Will an individual can select the Executor who will be entrusted with settling his or her estate and carrying out the particular distribution called for in the Will. The Executor chosen is often a family member or trusted advisor. When there is no Will the Probate Court will appoint someone to administer the estate and carry out the mandated distribution. Once again, the individual has no choice and it can increase costs.

With a Will, particularly when the Will is drafted in conjunction with a well thought out overall estate plan, a person can, in addition to meeting the needs of his or her family, take advantage of the many ways to reduce, or even eliminate, taxes and other expenses and thus avoid unnecessary shrinkage of the estate. When there is no Will these opportunities to preserve assets are lost. With a Will the surviving parent of a minor child may appoint a guardian of the child, a guardian in whom the parent has confidence and trust. When there is no Will, the Probate Court will act alone to appoint a guardian.

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WILLS FOR LESBIANS & GAYS



IN CONNECTICUT AN OVERVIEW

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WHY SHOULD I EXECUTE A WILL?

Clearly, a Last Will & Testament (or simply “Will”) is not exclusively designed to protect same-gender couples. Any person who owns any real estate (real property) or personal property that they wish to see pass to the person(s) of their choosing upon death should execute a Will. If you die intestate (without a Will), your real estate and personal property will pass to your biological family according to the probate statutes in effect at the time of your death, if you and your partner have not entered into a marriage or civil union. In other words, without a Will, you will have no control over who inherits your estate.

Suppose you own the home that you and your partner currently reside in but your partner’s name is not on the deed (title) to the property. In other words, your partner does not have any ownership rights to your home. If you die without a Will, your home will NOT automatically be passed to your partner (absent a marriage or civil union). In fact, your biological heirs will have the legal right to ask your partner to leave that home. Not so, if you execute a Will leaving your interest in the home to your partner, or granting your partner a “life use” of the home.

If you have minor children, executing a Will allows you to direct how they will be taken care of if you should die before they reach the age of majority. You may name a guardian for your children and/or direct that they are financially provided for through a testamentary trust.

If you own personal property such as jewelry or antiques — or if you simply own items of sentimental value that you wish to leave to specific individuals -- you should execute a Will in order to direct who will inherit those items upon your death.

WHAT IF I DIE WITHOUT A WILL (INTESTATE)?

If a person (decedent) dies without a Will, the probate court has jurisdiction to grant the right to someone to administer the estate. Connecticut lists those to whom such a right can be granted. They include:

A) The surviving spouse, (B) any child of the decedent or any guardian of such child as the court shall determine, (C) any grandchild of the decedent or any guardian of such grandchild as the court shall

determine, (D) the decedent’s parents, (E) any brother or sister of the decedent, (F) the next of kin entitled to share in the estate. The statute does not make provisions for the partner of the decedent to serve as administrator of the estate, even if there are no surviving next of kin (listed in A-F) above.

WHAT IS A WILL?

A Will is a document meeting certain formal requirements by which an individual may provide for the disposition of his or her property after death.

WHO MAY MAKE A WILL?

In Connecticut, anyone who is at least 18 years of age and of sound mind can make a Will.

HOW IS A WILL MADE?

Because a Will is such an important document, certain formalities must be observed in the preparation and signing of a valid Will. Only a document which satisfies *all* of the requirements imposed by law can be treated as an effective Will:

1. A Will executed in Connecticut must be in writing.
2. It must be subscribed (signed) by the person making the Will.
3. It must be attested by at least two witnesses who must subscribe in the presence of the person making the Will.

IS A LAWYER NECESSARY?

Like other professionals, lawyers have the training, knowledge and experience necessary to make informed judgments and insure that each individual client’s objectives and family situation are taken into account. The drafting of a Will is an important job that should be done professionally. No untrained person should attempt to write his or her own Will: the price of failure can be too great.

HOW LONG IS A WILL GOOD FOR?

A properly drawn and executed Will remains in effect until it is revoked. A subsequent marriage, divorce or dissolution of marriage, birth, or adoption of a minor child will revoke a Will unless a provision is made to cover such an occurrence. Of course, an individual can revoke his or her Will at any time.

CAN A WILL BE CHANGED?

A Will can be changed or added to at any time provided all the formal requirements are observed. A Will *should* be changed whenever it no longer meets an individual’s needs for any reason, including a change in family circumstances or change in assets, and should be reviewed periodically also on account of changes in the law.

DOES A WILL INCREASE PROBATE EXPENSES AND TAXES?

Probate Court fees are based on the size of an estate, not on whether or not there is a Will. Property owned by a decedent is subject to probate court jurisdiction whether or not there is a Will. A carefully drawn Will often results in a tax savings and may also result in the reduction of administration expenses such as bond payments.

IS JOINTLY OWNED PROPERTY A SUBSTITUTE FOR A WILL?

When most people refer to jointly owned property they mean property held by two or more people, usually a husband and wife, as joint tenants with right of survivorship. Under this arrangement, when one of the joint owners dies, title to the property automatically passes to the survivor. While this arrangement may be a useful device in some circumstances, it should not be considered a substitute for a Will. Joint ownership is a rigid arrangement: it often cannot be changed without legal or tax problems or altered as the family situation changes. In addition, while joint ownership may remove a particular asset from the probate estate, it does not avoid estate or succession taxes. Even when joint ownership is used, only a Will can give the flexibility to provide for special needs, deal with unusual circumstances, and insure that there is no unnecessary shrinkage of assets.

WHAT HAPPENS WHEN THERE IS NO WILL?

With a Will an individual directs the distribution of his or her property after death. With the limited exception of a surviving spouse being able to elect to receive a specific share prescribed by law, a person may, by Will, provide for any distribution he or she desires.

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