

Five Reasons Why You Need a Will

By Don G. Pope

Many people believe that they do not need a will because they think wills are only for the wealthy. Others do not see the need for a will because they are not married or do not have children. There are many reasons why it is important to have a will, and here are five of them:

1. To Dictate How Your Assets Will Be Distributed Upon Your Death

In order to understand why it is crucial for you to dictate who gets your assets, you must first understand what would happen if you were to die without a will (“intestate”). If you die without a will, your assets will be distributed according to the Oklahoma laws of intestate succession, which are found in Title 84 of the Oklahoma Statutes. These rules are very complex, and in some cases, not quite what you would expect, nor what you might want. Contrary to what some think, not having a will does not bypass probate. An estate without a will must still be probated.

According to the Oklahoma Statutes, *when a person dies without a surviving spouse, everything goes outright to the children.* Although there are some statutory safeguards requiring that the property be put in trust for the child until they turn eighteen, when that child turns eighteen, or if they already are eighteen or older, they will get everything outright. This thought scares many parents, who feel that eighteen year old children, barely out of high school, are not quite mature enough to handle large sums of money or property. In a will, you will have the opportunity to spell out exactly when you want your children to get their inheritance. Perhaps you do not want them to have access to it until they are twenty-five. Or perhaps you want someone else to monitor or control the use of their inheritance, so that they do not go blow it all on a Porsche when they should be using the money to pay for college. You can even arrange for your children to have certain distributions each month, until they reach a certain age, when they will get the rest outright. All of these protections can be made in a will. You may also want to pay special attention to the section on appointing a guardian for your children, discussed later in this article.

The Oklahoma intestate succession law is set out below. As you can see it is very complicated and may not be what you want to happen.

If the decedent leaves a surviving spouse, the share of the estate passing to said spouse is:

1. a. if there is no surviving issue, parent, brother or sister, the entire estate,
or
- b. if there is no surviving issue but the decedent is survived by a parent or parents, brother or sister:

(1) all the property acquired by the joint industry of the husband and wife during coverture (marriage), and

(2) an undivided one-third (1/3) interest in the remaining estate, or

c. if there are surviving issue, all of whom are also issue of the surviving spouse: an undivided one-half (1/2) interest in all the property of the estate whether acquired by the joint industry of the husband and wife during coverture or otherwise, or

d. if there are surviving issue, one or more of whom are not also issue of the surviving spouse:

(1) an undivided one-half (1/2) interest in the property acquired by the joint industry of the husband and wife during coverture, and

(2) an undivided equal part in the property of the decedent not acquired by the joint industry of the husband and wife during coverture with each of the living children of the decedent and the lawful issue of any deceased child by right of representation;

2. The share of the estate not passing to the surviving spouse or if there is no surviving spouse, the estate is to be distributed as follows:

a. in undivided equal shares to the surviving children of the decedent and issue of any deceased child of the decedent by right of representation, or

b. if there is no surviving issue, to the surviving parent or parents of the decedent in undivided equal shares, or

c. if there is no surviving issue nor parent, in undivided equal shares to the issue of parents by right of representation, or

d. if there is no surviving issue, parent, nor issue of parents, but the decedent is survived by one or more grandparents or issue of any grandparent, half of the estate passes equally to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of any paternal grandparent if both paternal grandparents are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation and the other half passes to the maternal relatives in the same manner; but if the decedent is survived by one or more grandparents or issue of grandparents on only one side of the family, paternal or maternal, the entire estate shall pass to such survivors in the manner set forth in this subsection, or

e. if there is no surviving issue, parent, issue of parents, grandparent, nor issue of a grandparent, the estate passes to the next of kin in equal degree;

3. If the decedent leaves no spouse, issue, parent, issue of parents, grandparent, issue of a grandparent, nor kindred, then the estate shall escheat to the state for the support of the common schools; and

4. For the purpose of this section, the phrase "by right of representation" means the estate is to be divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one equal share and the equal share of each deceased person in the same degree being divided among his issue in the same manner. The word "issue" means lineal descendants.¹

2. To Name a Guardian for Your Children

This is perhaps the most important function of a will to anyone with children under the age of eighteen. In a will, you can designate who you would like to be the guardian of your children in the event that something happens to you. There are many people out there with children who have done nothing to ensure that their children wind up with a trusted person in the event that something happens to the parent(s).

If you do not choose a guardian in writing, then it will be up to the probate courts to determine who will be the guardian of your children. The courts may appoint someone that disciplines children in a different manner from you or practices a different religion from you. The court will do what it thinks is in the best interest of the child, but the outcome may not always match what the parent would have liked. Who better to pick a guardian for the child than the parents themselves?

3. To Reduce Taxes on the Estate

In many cases, wills are used as estate planning vehicles. With careful planning, the estate taxes owed on some estates can be reduced. Moderately wealthy clients may benefit from some type of estate planning, including the setup of bypass and marital trusts. Since the estate taxes will be paid out of the estate proceeds, many parents want to minimize the taxes due in order to pass on more of their hard earned money to their children. This can very easily be accomplished through a will that creates trusts.

¹Title 84 Oklahoma Statutes, Section 213

4. To Make Specific Bequests of Personal or Real Property

Do you have jewelry that you want your daughter to inherit when you die? Do you want to leave your car to your best friend? Do you want to be sure that your house goes to your sister? These are all situations that would be best addressed through specific bequests in a will. As stated previously in this article, when someone dies without a will, their property will be distributed according to the Oklahoma Statutes for Intestate Succession. For instance, let's say that Mary died without a will, leaving a house worth \$150,000, a car, some jewelry, stock, and other assets. Her total estate is \$200,000. She has no husband, one daughter, and three sons. One of the sons lived with her and cared for her during her battle with cancer. Since Mary died without a will and is not married, her estate will simply be divided by four, so that each of her children gets \$50,000. In order for this type of distribution to work, the house and other assets will have to be sold, or transferred until each of the children has \$50,000 worth of assets. What if Mary felt strongly that her daughter should keep the jewelry, and her son Joe should get the car? And what if she wanted her son Bill, who lived with her, to keep the house? The only way Mary could have ensured that any of this would happen would have been through specific bequests in a will.

5. Peace of Mind

Planning for the future by having a will gives you one less thing to worry about and it ensures that your wishes are carried out and your property is not distributed by preset designations that may or not reflect your desires. It will also allow you to go about your daily life without worrying every time you take a vacation or when you get sick or wind up in the hospital. By planning for the future now, you can stop worrying and start living!