How To Make Your Funeral Wishes Known

How can you make sure your funeral and burial wishes will be carried out after you die? It is important to let your family know your desires and to put them in writing. Just don't do it in your will.

To help your family or close friends follow your wishes after you are gone, you can write out detailed funeral preferences as well as the requested disposition of your remains. In addition to explaining where you want your funeral to be held, the document can include information about who should be invited, what you want to wear, who should speak, what music should be played, and who should be pallbearers, among other information. Making these decisions ahead of time can not only let everyone know what your wishes are, it can also help your family members during their time of grief.

It may be tempting to include this information in your will, but a will may not be opened until long after the funeral is over. A will is best used for explaining how to distribute your property, not for funeral instructions. You can write your funeral and burial directions in a separate document or you may be able to put your wishes in your health care directive. Whatever you do, make sure your family knows where to find the information.

If you don't make your wishes known, the responsibility for determining your funeral and burial rests with your loved ones. If you are married, your spouse is usually in charge of making the decisions. If you are not married, the responsibility will likely go to your children, parents, or next of kin. Disputes could arise between family members over what you would have wanted.

It is possible to make funeral arrangements ahead of time with a funeral home. However, be wary of pre-paid funeral plans. Consumers can lose money when pre-need funeral funds are misspent or misappropriated. A funeral provider could mishandle, mismanage or embezzle the funds. Some go out of business before the need for the pre-paid funeral arises. Others sell policies that are virtually worthless. For more on the dangers of pre-paid plans, click here.

For help with making your funeral wishes known, talk to your attorney.

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Dangers of Creating A Will Without Legal Assistance

People sometimes try to save money by not consulting with a qualified attorney when executing their will, instead using a pre-printed form or online program. A recent court case offers yet another example of the hazards of doing this. Deciding the long-running case, the Florida Supreme Court has ruled that money acquired by a woman after she used a form to execute a will should be distributed as if she had never made a will at all. A justice hearing the case called it "a cautionary tale of the potential dangers of . . . drafting a will without legal assistance." *Aldrich v. Basile* (Fla., No. SC11-2147, March 27, 2014)

Ann Aldrich wrote her will on an "E-Z Legal Form." She listed several possessions and bank accounts that she intended to go to her sister unless her sister died before her, in which case they were to go to her brother. Ms. Aldrich's sister did indeed die before her, and Ms. Aldrich inherited additional money and property from the sister. However, Ms. Aldrich did not have a "residuary clause" in the original will and she never revised the will to account for this new property.

After Ms. Aldrich herself died, the court had to determine who would inherit the property Ms. Aldrich received after she wrote the will. Her brother argued that he was entitled to all her property, but Ms. Aldrich's nieces (the daughters of a second brother who had died) maintained that the property should pass through intestacy – according to state law for those who have no will. The case wound its way through the courts. A trial court ruled for Mr. Aldrich, but an appeals court reversed that ruling, and Mr. Aldrich appealed.

The Florida Supreme Court has determined that although the will made it clear that the property listed was to go to Ms. Aldrich's living brother, the will did not say anything about property acquired after the will was written. Because the will had no residuary clause or general bequests that could include the inherited property, the court held that the after-acquired property will have to pass under Florida's laws of intestacy.

A concurring judge noted that the case was "a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance."

The irony is that using a boilerplate will form not only frustrated Ms. Aldrich's testamentary intent, but ultimately cost her estate far, far more than a simple consultation with an estate planning or elder law attorney would have.

To read the court's decision in the case, click here.

For Consumer Reports' conclusions on do-it-yourself wills,

click here.

For an ElderLawAnswers White Paper on letting a computer plan your estate, click here.

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Redo Your Estate Plan Before You Remarry

If you are getting remarried, you obviously want to celebrate, but it is also important to focus on less exciting matters like redoing your estate plan. You may have created an estate plan during your first marriage, but this time it will probably be more complicated—especially if you have children from your first marriage or more assets. The following are some pointers for ensuring your interests are taken care of when you remarry:

- **Take an inventory**. The first thing you and your partner should do is each take an inventory of your assets and debts and share it with the other person. Don't forget to include life insurance policies and retirement plans in your inventories. It is important to be open and honest about money if you want to prevent bad feelings in the future.
- **Decide how you want to handle finances**. Once you know what you are dealing with, then you need to decide if you want to combine (or not combine) assets when you are married. For example, if one partner is selling a house and moving in with the other partner, will he or she

contribute to the cost of the house? If one partner has significant debt, you may not want to combine finances or make any joint purchases. These decisions need to be made upfront so everyone is clear on what to expect.

- **Decide what you want to happen when you die**. You and your future spouse need to figure out where each of you wants your assets to go when you die. If you have children from a previous marriage, this can be a complicated discussion. There is no guarantee that if you leave your assets to your new spouse, he or she will provide for your children after you are gone. There are a number of options to ensure your children are provided for, including creating a trust for your children, making your children beneficiaries of life insurance policies, or giving your children joint ownership of property. Even if you don't have children, there may be family heirlooms or mementos that you want to keep in your family. Again, open discussions can prevent problems in the future.

- **Consult an elder law or estate planning attorney**. Even if you don't have a lot of assets, you should consult an attorney, especially if you have children. You will definitely need to update your will. You may also need to update or create other estate planning documents such as a durable power of attorney and a health care proxy. If you have significant assets, a prenuptial agreement may be appropriate. In addition, the attorney can help you decide if a trust is necessary to protect your children's interests.

- **Change your beneficiaries**. You may want to change the beneficiaries on your life insurance policy, annuity, and/or retirement plan. If you are divorced, however, you may not be able to change some of the beneficiaries. Bring your divorce decree with you to the attorney so he or she can make sure you do not violate the decree. If

you can’t change your beneficiaries, you may want to buy additional life insurance or retirement plans that will include your new spouse.

- **Consider a prenuptial agreement**. While you are intending to stay married, things happen. Unlike a first marriage, you may be bringing property to this marriage that you spent decades accumulating and you may be merging two families. You need to decide together what your intentions are for the use of funds while you are living together, if you get divorced and when one of you dies before the other. Failure to think and plan ahead can mean severe heartache and financial costs for you and your family.
- **Consider purchasing long-term care insurance**.The physical, emotional and financial cost of long-term care can deplete the savings of all but the most wealthy. While you may be willing to spend your lifetime of savings on the care of a spouse with whom you raised a family and accumulated the funds, you may not want to lose this to the care of a relatively new spouse. Long-term care insurance, while expensive, can permit you and your new spouse to get the care you need without impoverishing the other.

The most important thing to remember is to be open and honest with your future spouse and your family members about your wishes.

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When Should You Update Your Estate Plan?

Once you've created an estate plan, it is important to keep it up to date. You will need to revisit your plan after certain key life events.

Marriage

Whether it is your first or a later marriage, you will need to update your estate plan after you get married. A spouse does not automatically become your heir once you get married. Depending on state law, your spouse may get one-third to one-half of your estate, and the rest will go to other relatives. You need a will to spell out how much you wish your spouse to get.

Your estate plan will get more complicated if your marriage is not your first. You and your new spouse need to figure out where each of you wants your assets to go when you die. If you have children from a previous marriage, this can be a difficult discussion. There is no guarantee that if you leave your assets to your new spouse, he or she will provide for your children after you are gone. There are a number of options to ensure your children are provided for, including creating a trust for your children, making your children beneficiaries of life insurance policies, or giving your children joint ownership of property.

Even if you don't have children, there may be family heirlooms or mementos that you want to keep in your family. For more information on estate planning before remarrying, click here.

Children

Once you have children, it is important to name a guardian for your children in your will. If you don't name someone to act

as guardian, the court will choose the guardian. Because the court doesn’t know your kids like you do, the person they choose may not be ideal. In addition to naming a guardian, you may also want to set up a trust for your children so that your assets are set aside for your children when they get older.

Similarly, when your children reach adulthood, you will want to update your plan to reflect the changes. They will no longer need a guardian, and they may not need a trust. You may even want your children to act as executors or hold a power of attorney.

Divorce or Death of a Spouse

If you get divorced or your spouse dies, you will need to revisit your entire estate plan. It is likely that your spouse is named in some capacity in your estate plan – for example, as beneficiary, executor, or power of attorney. If you have a trust, you will need to make sure your spouse is no longer a trustee or beneficiary of the trust. You will also need to change the beneficiary on your retirement plans and insurance policies.

Increase or Decrease in Assets

One part of estate planning is estate tax planning. When your estate is small, you don’t usually have to worry about estate taxes because only estates over a certain amount, depending on current state and federal law, are subject to estate taxes. As your estate grows, you may want to create a plan that minimizes your estate taxes. If you have a plan that focuses on tax planning, but you experience a decrease in assets, you may want to change your plan to focus on other things.

Other

Other reasons to have your estate plan updated could include:

You move to another state

- Federal or state estate tax laws have changed
- A guardian, executor, or trustee is no longer able to serve
- You wish to change your beneficiaries
- It has been more than 5 years since the plan has been reviewed by an attorney

Contact your attorney to update your plan.

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How to Make Changes to Your Will

As life circumstances change (births, marriages, divorces, and deaths), it may become necessary to make changes to your will. If an estate plan is not kept up-to-date, it can become useless. The best way to make changes is either through a codicil – an amendment to the will – or by creating a new will.

While it may be tempting to just take out a pen and make changes by hand, this is not recommended. Changes will not be effective unless you use the same formalities as you did when drafting the will. And depending on state law, changes made by hand on the will may void the will altogether. If you sign your name to handwritten changes and have the changes witnessed, it is possible a court will find that the changes are valid, but there is no guarantee and there are likely to be delays with the court while your final wishes are sorted

out.

If you have small changes to make to your will (i.e., changing your executor or updating a name that has changed), a codicil may be appropriate. The benefit of a codicil is that it is usually cheaper than redoing the entire will. The same rules for wills apply to codicils, which means the codicil should be dated, signed, and witnessed. Always keep a codicil with the will so your personal representative can find it easily.

If you have significant changes to make to your will (i.e., adding a spouse or removing a beneficiary) or have more than one change, it is generally better to update your will rather than write one or more codicils. The updated will should include a date and a clear statement that all other previous wills and codicils are revoked.

Before you make any changes to your will, you should consult with your attorney.

For more information on when you should update an estate plan, click here.

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