

# What does a Will actually do?

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# What does a Will actually do?

- ▶ A will controls the disposition and management of your estate assets after you die.
- ▶ How do we define “Estate Assets”?

For a more details, see this article: [Calculating the Probate Estate](#).

Jointly-Owned Assets

→

Surviving Owner

Assets w/ beneficiary  
designation\*

→

Beneficiary

Assets owned by  
a trust

→

Whatever the  
trust says

Whatever is left over

→

Estate

\*Synonyms for “beneficiary designation” include “transfer on death” (TOD) and “payable on death” (POD). All of these terms mean the same thing.

# The Estate

- ▶ The assets in the Estate are the only assets that go through probate.\*
  - The Executor only has control of the Estate assets
  - The terms of the Will (or the laws of intestacy) only apply to Estate assets
  - In general, creditors only have a claim to the Estate assets

\* Except real estate - it has its own rules.

# Real Estate

- ▶ In general, real estate passes “outside the estate.”
- ▶ [Real estate skips probate.](#)
- ▶ Ownership of the real estate vests immediately in the heirs the moment the decedent passes.
- ▶ The executor usually has no power or authority over the real estate.

## Exceptions:

- ▶ If you want the executor to have the power to sell the real estate, you must specifically state that in the will.
  - ▶ “I bequeath my real property located at 123 State Street to the executor of my estate, for the purpose of selling that real property and adding the proceeds to my residuary estate.”
  - ▶ You have to be incredibly specific, or you won’t find a title company willing to insure the sale.
- ▶ If the decedent has debts or specific bequests that can’t be satisfied with other estate assets, the real property can be “brought into the estate” for the purpose of liquidation and satisfaction of the creditors.
- ▶ If the executor gains authority to sell the real estate by some other means, such as a court order or an agreement entered into by all the beneficiaries.

# Examples

1. Mom has three children and no Will. When Mom passes, she owns the following assets:
  - Checking/savings accounts titled jointly with daughter, Sharon.
  - Investment accounts that have all three children listed as TOD.
  - Her home.
  
2. George has no spouse or children. His Will leaves everything to his sister, Lillian. When George dies, he owns the following assets:
  - An IRA with Lillian named as beneficiary.
  - Checking/savings accounts totaling \$150,000 with no joint owner or beneficiary.
  - Savings bonds that total \$30,000.
  - His home.

What exactly, does it mean to “go through probate”? For a better explanation, see here: [Overview of the Probate Process](#).

Alternatively, what if George’s checking/savings account only total \$10,000? Then we are dealing with a “small estate,” and we can likely use the strategies explained here: [Shortcuts for Small Estates](#).

# Now that you know what the Will actually does, what should it say?

- ▶ Keep it as SIMPLE as possible. Resist the urge to leave \$1,000 to everyone you ever knew.
- ▶ If you have charitable intent, consider making the charity the beneficiary of your retirement account and leave it out of the will.
- ▶ If the only asset in your estate is going to be your house, don't say something that will make your primary beneficiary have to sell it, i.e. "I give \$10,000 to Joe and everything else goes to Mary."
- ▶ Realize that your beneficiary designations are probably more important than your will.



If you can only afford one document, get a durable property power of attorney (POA)

- ▶ By the time your Will matters, you will be dead.
- ▶ Your POA directs the management of your assets while you are still living.

# Power of Attorney

## ▶ Common pitfalls

- Doesn't name backup agents
- Doesn't address who can and can't review the actions of your agent
- Has an expiration date
- Does not include all of the necessary powers for your situation

# Unless specifically included, your Agent only has the powers listed in 64.2-1624.

- ▶ Some of the powers that aren't included are:
  - Create, amend, revoke or terminate a Trust
  - Make gifts in excess of \$14,000/person/year
  - Create or change a beneficiary designation
  - Delegate authority granted in the PoA
  - Waive your right to certain retirement benefits
  - Exercise fiduciary powers on your behalf
  - Purchase U.S. savings bonds
  - Access records of your electronic communications