

## Conditional Gifts

When drafting a will, a testator can make gifts conditional on the occurrence of certain events. These are called “[conditional gifts](#)”

### **How Do Conditional Gifts in Wills Work?**

The very purpose of making a will is usually to give the testator (the person making the will) peace of mind during life, by ensuring that his or her loved ones will be provided for, to the extent the testator’s means enable, after the testator’s death.

However, the testator may also want to have some influence in the lives of his beneficiaries after his death, and would be able to derive some peace of mind from it during life.

The nature of wills and trusts law in the United States makes this possible, within certain limits. It’s important to note that a will cannot force someone to do anything. What it can do, however, is provide a major incentive.

Suppose you really value education, and want to give your grandson every incentive possible to attend college. You can make a provision in your will leaving him a large sum of money, or some other piece of valuable property you own, to your grandson on the condition that he graduates college before reaching a certain age.

Note that your grandson doesn’t *have* to attend college. But if he chooses not to, he is losing out on whatever you left him.

### **What Types of Conditional Gifts Are There?**

There are two basic types of conditions: conditions precedent and conditions subsequent.

A condition precedent is an event which must occur *before* the property goes to the beneficiary. For example, a will might read “I leave \$100,000 to my son John Doe, provided that he graduates from college before he reaches the age of 25, otherwise I leave it to my daughter Jane Doe.” John Doe must graduate college before he gets the money. This is a good example of a condition precedent, and a well-designed conditional gift. Notice how it sets a firm deadline for the condition to occur; the day John Doe turns 25. At that point, it’s incredibly easy to determine if the condition has occurred: if John Doe has graduated college by that point, the condition has been met. If he has not, the condition has not been met, and can never be met.

This gives John Doe a reasonable period of time to meet the condition, but also provides a definite date on which the condition expires, and another place for the money to go (to Jane Doe) if the condition is not met. If the condition had no deadline, or no alternative beneficiary, the money can remain in legal limbo forever.

Conditions subsequent can be trickier. A condition subsequent is something that can occur after a gift is distributed, thereby voiding it.

For example, a condition subsequent might go something like this: “I leave my house on 123 Fake Street to my son John Doe, provided that he never remodels it.” So, what happens to the house if John Doe remodels it? What if he remodels it 50 years after receiving it, by which point anyone who might have reason to object has passed away? As you can see, such a poorly-designed condition subsequent would likely prove, at best, ineffective. At worst, it can leave property in a state of legal limbo, where it’s impossible to say who legally owns it.

If you must put a condition subsequent in your will, you may have to compromise if you want it to have a good chance of being enforced. For example, you might leave your house to John Doe on the condition that the house is not remodeled within 20 years after John Doe takes possession of it, and name an alternative beneficiary in case it is remodeled in that time.

### **Limits on Conditional Gifts**

Most conditional gifts are legally valid, though in many cases, enforcing them is another matter entirely.

However, there are some conditions which most would agree are so onerous or meddlesome that they should not be enforced. First, and perhaps most obviously, a gift conditioned on the beneficiary doing something illegal will not be enforced.

Other unenforceable conditions include:

- A requirement that the beneficiary change his religion
- A requirement that the beneficiary marry, refrain from marrying, or divorce a particular person

However, courts are generally disposed to uphold conditions which might appear invalid at first glance. In one case, for example, a testator wrote a will leaving a large sum of money to his son, provided that he married a Jewish woman, otherwise the money would be left to the state of Israel. The son objected to this condition, and the court upheld it, on the grounds that it did not require him to marry any particular person, nor did it require him to change his religion.

### **Can A Lawyer Help?**

If you [are drafting a will](#), and want to make a conditional gift, you should consult with a [wills and trusts lawyer](#). Your [lawyer](#) will be able to draft a particular conditional devise in a manner that makes it clear, and likely to be held valid.