

WHAT A WILL CAN (AND CANNOT) DO

A will is a simple and effective tool at accomplishing a number of goals and estate planning needs, but it can't do everything. Here are some goals that a properly drafted and executed will can and cannot accomplish.

A will CAN be used:

- A will enables you to determine where your property will go, including to people who are or aren't your heirs rather than letting it go where the intestacy laws of your state dictate it will go if there is no will.
- A will enables you to keep property from going to heirs who should not receive it, either because of unfriendly feelings or the fact that they have no need. Similarly, property can be kept from going into large estates where it will serve little purpose other than increasing death taxes for that individual.
- A will enables you to increase the share which a spouse may receive to an amount sufficient to provide for his or her needs, or it enables you to decrease the amount a spouse may receive in order to reduce any potential death taxes.
- A will enables you to protect beneficiaries that are too young or otherwise not yet able to handle their own finances.
- A will permits you to select a guardian for minor children.
- A will enables you to select an executor who will be responsible for administering your estate after you're gone.
- A will enables you to waive any bond requirements of a chosen executor which can decrease the usual costs of probate.

A will CANNOT be used (or perhaps more accurately, SHOULD NOT be used):

- A will cannot be used to gift jointly titled assets, such as property held in joint tenancy with right of survivorship. Certain jointly titled assets will pass by operation of law to the other individuals named in the titling document.
- A will cannot be used to gift property held in a living trust; HOWEVER, it can be used to pass property to a living trust which may have not yet been titled in the name of the trust upon your death.
- A will cannot typically gift proceeds of a life insurance policy for which a beneficiary has been named.
- A will cannot typically gift money in pension plans, IRAs, 401(k)s or other retirement plans for which you have named a beneficiary directly with the account administrator.

- A will cannot give access to beneficiaries to directly access any bank accounts or other funds specifically left to them. Instead, it names an executor who will collect and distribute the funds with supervision from the court during the probate process.
- A will is not an appropriate place to include funeral or memorial instructions. Contrary to popular culture, there is no official “reading of the will” and more times than not, a will is not found until days after death at which point funeral arrangements have already been made.
- A stand alone will cannot reduce your estate taxes. While it may be possible to gift property to individuals with the goal of minimizing the size of their estate and thus reducing THEIR potential estate tax liability, it will do nothing to reduce your taxes when you die.
- A will does not avoid probate. It merely guides your loved ones on how you wish for that process to unfold.

While a will is an incredible useful tool to ensure that even the most modest and simple estates pass in ways that you desire, as you can see, they can’t be used to accomplish every goal. Other tools such as revocable and irrevocable trusts, special needs trusts, marital property agreements, modification of beneficiary designations, transfer on death account designations and retitling of assets such as real estate can be used in conjunction with a property written will to create a comprehensive estate plan uniquely tailored to your needs regardless of your situation.

Michael F. Brennan is an attorney at the Virtual Attorney™ a virtual law office helping clients in Illinois, Wisconsin, and Minnesota with estate planning. He can be reached at michael.brennan@mfblegal.com with questions or comments, or check out his website at www.thevirtualattorney.com.

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By Michael Brennan

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