

Legal Matters – April, 2008

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any legal questions you'd like answered in this column, you can email them to barryevans@msn.com or call Barry Evans at 281-557-1900.



What Happens if you Die in Texas without a Will?

If you die in Texas without a will, the state will write one for you. Without a will, you leave the distribution of your estate up to the laws of the state of Texas and a judge. Often, the people who inherit your property under Texas law are different than the people you would name in your will. The law does not play favorites, so the distribution is determined by how closely the heir was related to the decedent, not by how wonderful one was to the decedent. Dying without a will may trigger undesired results and unexpected costs and delays. Your estate will be responsible for the costs of searching for your heirs, and for the legal costs of an 'attorney ad litem' whom the court will appoint to represent unknown and missing heirs. Failure to leave a valid will that clearly sets forth your intentions can greatly increase the cost of probate and delay the division of property. It can tie up assets for an undetermined period of time.

What is a Will?

A will is a legal document which may be accepted by a court with probate power and normally states how property is to be distributed after a person's death. If you own property or have minor children, you should have a will. There are several advantages to a will in Texas. You may name an executor of your will; you can state that your executor will serve "independently" so the court does not supervise the administration; you can name guardians to take care of minor children; and you can also create trusts for minor children. You can do all this and simplify the hearing by having a will drafted with a self-proving affidavit alleviating the need for witnesses to come to court at the time of the probate to prove up the contents of the will. Keep in mind, though, if you own a life insurance policy, retirement plan, Individual Retirement Account or annuity, these assets will pass to the beneficiaries you have designated regardless of whether you have a will.

Some statistics say that over 50% of Texans do not have a will. The creation of a simple will can save a lot of time and expense to friends and family after death. Accordingly, every Texan, regardless of age or location should consult with a Texas attorney to obtain a will. If you have any questions regarding Texas wills, you may contact Barry Evans at 281-557-1900 or email him at barryevans@msn.com.

Editor's note: *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*