DUTTON CASEY & MESOLORAS P.C.

ELDER LAW | ESTATE PLANNING | GUARDIANSHIP | PROBATE

10 COMMON ESTATE PLANNING QUESTIONS

1. **Why do I need a Will?** A Will is a basic estate planning tool in which a person, the testator, states how he or she would like his of her estate to be distributed and administered upon death. A basic Will sets forth the name of a person to administer the estate, called an executor, and directs the executor as to how and among whom the estate assets should be distributed. If a person dies without a will, which the law calls "intestate," Illinois statute sets forth a hierarchy for distribution of one's estate. Generally speaking, the estate is divided among the decedent's spouse and children, if any. If there are none, the statute sets forth the hierarchy of heirs who would inherit the decedent's assets. Therefore, the benefit of having a Will is that it allows an individual to specify to whom those assets should be distributed, which may be vastly different than the default provisions under the statute.
2. **What do I do with my Will?** Keep the original in a safe place, such as a safe deposit box. It is also a good idea to tell a trusted person where it is kept so that he or she can collect it upon death. Upon the death of the testator, the Will should be filed with the Clerk of the Circuit Court in the county in which the testator resided. The Will should be field within 30 days of the decedent's death. The Will is not filed with the Clerk during the lifetime of the testator.
3. **What happens if my named executor dies?** An executor is the individual chosen to administer the estate assets pursuant to the terms of one's Will. It is advisable to name not only an executor to a Will but at least one successor executor to act in the event of death or disability of the primary executor of if he or she declines to act. If there is no named executor or successor executor, then the law sets forth a hierarchy allowing the heirs of the decedent to nominate an administrator of the estate.
4. **What happens if my attorney dies?** An attorney's death during the lifetime of their client will not likely have an adverse effect on the client. The client will need to find new representation, but the attorney's death does not affect the validity of any estate planning documents. There is also no requirement that the nominated executor or trustee hire the same attorney that drafted the estate planning documents, although many choose to do so.
5. **Do I have to leave anything to my children/spouse/relatives?** The simple answer is no. An individual has no obligation to leave his estate to anyone. However, Illinois law does allow the spouse of the decedent to renounce the Will and take his or her statutory share of the deceased spouse's estate (the share the surviving spouse would be entitled to if there was no Will). Additionally, there are statutory spousal and children's awards designed to offer financial support to surviving spouses and the decedent's minor or adult dependent children immediately following the decedent's death.
6. **Is my will still valid?** Wills do not expire. However, it is always advisable to periodically review one's estate planning documents with an attorney to make sure they are still applicable to one's particular situation. Marriage, divorce, birth or death are common events triggering amendments or revision of estate plans.

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NELF National Elder Law Foundation Certified Elder Law Attorney

ACADEMY OF SPECIAL NEEDS PLANNERS

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7. **Why do I need a trust?** Trusts are widely used both as a general probate avoidance tool and as a disability planning device. In Illinois, if the total assets held by a decedent upon his or her death total $100,000.00 or more or the decedent had real estate, those assets must be administered through the court system. This court procedure is called probate. Those assets subject to probate only include the assets that were held by the decedent in his name alone, without beneficiaries and outside of a trust. Those assets that are held in a trust will be administered by the trustee and are not subject to the probate process. Unlike Wills, trusts are not filed with the court upon one's death and are not made part of the public record. The trust document itself sets forth the powers and duties of the trustee with respect to those assets held in Trust. Often individuals who establish trusts, called grantors, name themselves as the trustee. It is always advisable for the grantor to name a successor trustee in the event of death or disability. If the trustee becomes disabled, the successor trustee can accept the office and manage those trust assets for the benefit of the original grantor without the need for court intervention.
8. **How do I put my property into my trust?** Many assets may simply be re-titled in the name of the trust, for example, "John Doe, Trustee for the John Doe Trust dated 3/1/11." Some financial institutions may require that existing accounts be closed and then opened under a new trust account number. Real estate is transferred into a trust by executing and recording a Deed in Trust. Some assets, as stocks or securities, must be reregistered in the name of the trust.
9. **If I have a trust, do I need a will?** Usually, if an individual has a trust, he or she will also have a "pour-over" Will. This Will directs the executor to transfer to the trustee any assets held by the decedent upon his or her death. The assets are then administered pursuant to the terms of the trust. Therefore, the Will provides a safeguard for those assets that never made it into the trust during the decedent's lifetime. Without a pour over Will, those assets would be distributed pursuant to the Illinois law of intestate succession.
10. **Why do I need Powers of Attorney?** Powers of Attorney are instruments which allow a principal to delegate decision making authority to another person, called an agent. Durable powers of attorney continue to be valid if the principal becomes disabled. In Illinois, there are Powers of Attorney for Health Care and Powers of Attorney for Property. As the names suggest, the agent under the power of attorney for health care is authorized to make medical and health care related decisions and the agent under the power of attorney for property is authorized to make broad decisions with respect to financial assets, real estate and personal property. Depending on the terms of the power of attorney, the agency may become effective upon the principal's signing the document, or may become effective at a certain later date, such as upon the principal's disability. Valid powers of attorney, executed when the principal is competent, avoid the need for a court-appointed guardian to make decisions for the principal if he or she becomes incompetent.

When you have questions related to elder law, estate planning, special needs and long-term care planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 150 years of combined legal experience, you can depend on our team for the knowledge, advice, and support you deserve to resolve your legal needs.

Resources:
National Elder Law Foundation — www.nelf.org
National Academy of Elder Law Attorneys — www.naela.org

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