

## What Is A Will?

A will, in proper legal form, is a written instrument specifying the disposition of your assets after your death. In most cases a will is valid until you amend or revoke; however, exceptions can apply for certain provisions of the will for example upon a divorce. Probate is the court process of disposing of your assets within a certain time frame after death. The amount of time required to close your estate varies based upon the complexities of the estate. Not all assets go through probate. Examples of non-probate assets can include assets that you have titled with other people or assets that you have already selected a beneficiary designation on such as life insurance.

## What Happens If I Do Not Have A Will?

If you do not have a will, your probatable assets will still go through probate and be distributed through “intestate succession.” In other words, your assets will pass to your heirs (a relative who has a right to inherit) through a statutory scheme which varies by and is set by each state.

## Why Do I Need A Will?

Most persons need a will if they have assets and/or children. Having a will helps to ensure that your wishes are followed with respect to those that should receive your assets upon your death. A will also allows you to: name a guardian; name a person to manage your estate; potentially reduce estate taxes; set up a trust for your children; and more. It is also important to periodically update your will based upon changes in your family, finances, residence or certain federal/state tax schemes.



## What Is A Trust?

A trust is an agreement between you and another individual or entity that holds legal title to your property and manages it for the benefit of one or more persons named in your trust. A trust can be created in your will, with such trust starting upon your death, or can be created while you are alive and start immediately. Trusts are important tools regardless of your financial wealth.

## What Is A Living Trust?

Unlike a trust in a will where assets only pass to a trust after death, a living trust allows you to transfer assets to a trust while you are living. These trusts can be revocable (changed or terminated prior to death) or non-revocable (in most cases, cannot be changed once created). Accordingly, many people choose to create a revocable trust. It is also important to note that



assets must be placed into the trust as they are acquired in order to take full advantage of your trust. For instance, if one wants to transfer his or her house to the trust, the house will need to be properly titled in the name of the trust and recorded with the proper agency. While living, many people are trustees (a person/entity who manages the trust) of their own trust.

## Does A Living Trust Replace A Will?

Even if a living trust is created, it is still important to have a will. This ensures any assets not properly transferred to the trust, or any assets not captured by the trust, are given to the proper beneficiaries that you select. A will created with a living trust is considered a “pour-over” will as it transfers probate assets to the trust upon death.



## Should I Have A Living Trust?

An advantage to a living trust is that the assets contributed to the trust during your lifetime will avoid going through the courts, and your wishes upon death will not be readily available to the public. A disadvantage of a living trust is additional steps and upfront costs may be required in order to create, fund and manage the living trust. However, remember there are also extra costs involved when a will goes through probate.

## What Can I Do To Maintain Control Of My Health Decisions If I Cannot Make The Decision Myself?

First, have a healthcare directive drafted. A healthcare directive sets forth your wishes regarding life-sustaining treatment in the event of a terminal illness. This allows you to avoid having a family member make the tough decision as to whether to artificially prolong your life. The healthcare directive is only used once your physicians make a determination that you have a terminal illness.

Second, have a Durable Power of Attorney for Healthcare drafted. A durable power of attorney for healthcare allows you to name a person to give consent, refuse consent or withdraw consent for healthcare services when you are unable to act for yourself. How much power you give this agent varies and is based upon your wishes. Unlike a healthcare directive, which only deals with terminal illness, a durable power of attorney for healthcare allows your agent to weigh the pros and cons of various other healthcare services based on your wishes. Once both documents have been created, they should both be provided to your treating physician.

## What Can I Do To Maintain Control Of My Finances If I Cannot Make The Decision Myself?

A Durable Power of Attorney for Finance is very similar to a durable power of attorney for healthcare except it deals with finances. This allows a person to help manage your assets and bills when you are unable to act for yourself. This power can be very broad and sweeping or limited depending upon what you decide. One can have this power start immediately upon the creation of the document or can choose to have the power start upon the occurrence of a certain event such as incapacity.

For more information or to set up a free consultation contact

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## In Addition To Estate Planning, Lyle Law LLC Provides Representation In The Following Areas:

### Family Law

- ✦ Divorce, Legal Separation & Annulment
- ✦ Pre-Marital & Post-Marital Agreements
- ✦ Child Support & Spousal Maintenance
- ✦ Child Custody & Parenting Plans
- ✦ Paternity Actions
- ✦ Orders of Protection

### Damages, Disputes & Litigation

- ✦ Personal Injury
- ✦ Property Damage
- ✦ Premises Liability
- ✦ Products Liability
- ✦ Collections & Liens
- ✦ Landlord/Tenant Disputes
- ✦ Breach of Contract

### Contracts, Negotiations & Business Law

- ✦ Purchase/Sale Agreements
- ✦ Employment Agreements
- ✦ Formation of Businesses
- ✦ Terms and Conditions of Professional Services
- ✦ Risk Management
- ✦ Waivers of Liability
- ✦ Confidentiality Agreements

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*Select portions of this pamphlet have been taken from various publications of the Kansas Bar Association ("KBA"). For more information on a subject area, please visit the KBA's website at [www.ksbar.org](http://www.ksbar.org).*

# Where There's A Will, There's A Way.

## An Overview of Estate Planning

Subject Areas Include:

- ✦ Wills
- ✦ Trusts
- ✦ Powers of Attorney
- ✦ Healthcare Directives

**LYLELAW** LLC