The following is general legal information, provided as a public service by Oregon's lawyers. The information is not intended to be legal advice regarding your particular problem. Note that changes may occur in this area of the law.

What is a will?

A will is a set of instructions that explains how you want your property distributed after your death. In Oregon, you must be at least 18 years old and of sound mind to make a will. If you are married, you can make a will before you turn 18. Your will must be in writing and must be signed by you and two witnesses. The witnesses must also have seen each other witness your will. Some people cannot serve as witnesses to your will. It is important to make sure that all of Oregon's legal formalities are carefully observed.

What are the benefits of a will?

A will allows you to decide who will manage your money and other property after you die, and how it will be distributed. It lets your wishes be heard regarding the care of minor and disabled children. It often prevents disputes among your relatives. In a large estate, a will can also reduce the amount of taxes that may be due at your death.

Who should draft a will?

A will is an important legal document that can have a significant impact on your family. A lawyer can give you good advice on how the will should be prepared and executed. Having a lawyer draft your will gives you the assurance that your voice will be heard regarding how you want your children to be cared for and how you want your property to be distributed.

Does a will avoid probate?

No, but a having a will can reduce the cost of probate and the burden to your friends and family. Whether your property needs to go through probate is determined by how that property is titled, not whether you have a will.

Can joint accounts substitute for a will?

Joint accounts, life insurance and retirement accounts usually do not have to go through the probate process, but they do not act as a complete will substitute. Many spouses own real estate, bank accounts, stocks and bonds, and other types of property as husband and wife with the right of survivorship. This means that if you die, your jointly owned property passes automatically to your surviving spouse, regardless of what your will says. Life insurance and retirement accounts are contractual documents. You should fill out the beneficiary designation form for each company you contract with to tell that company who is to receive your death benefit. Your beneficiary designation will determine who gets the benefit regardless of what your will says. Beneficiary designations and joinly owned accounts can be good probate avoidance techniques but should only be considered as part of a complete plan that includes a will.

What happens if I do not have a will

If you do not have a will, and if you have probate property, your property will be distributed according to instructions made by the Oregon legislature. For example, if you are married and don't have children, all property that is in your name alone will go to your spouse. This is also true if you are married and have children that are born of your current marriage. If you are married and have children from a prior marriage, half of your property will go to your spouse and the other half will go to all of your children. If you have a child under the age of 18, the court may choose someone to take care of the property for that child. If you do not have a will or any family that would be entitled to your property, your property (that is in your name only) may go to the state of Oregon. Your family (heirs) includes a large category of relatives: spouse, children, grandchildren, parents, siblings, grandparents, nieces, nephews and cousins.

Whom may I choose to inherit my property if I write a will?

The only rule is that if you are married, your spouse has a right to claim 25 percent of your estate. Generally, unless you entered a pre-marital agreement in which you validly waived your right to claim 25 percent of your spouse's estate, spouses cannot disinherit each other. You are not required, however, to leave anything to your children or other family members. You may instead choose a friend or charity to inherit your property. If you plan to disinherit a family member it is very important that you consult with an attorney experienced in estate planning to make sure that your plan will be followed.

What is a personal representative?

If your estate needs management, a personal representative (executor) will be appointed by the court. Having a will lets you decide who that person will be. You may choose someone familiar with your property and affairs or a professional who can serve as a personal representative. If you think there may be hard feelings in your family or your estate has complications such as children from a previous marriage, you may want to name a professional. Many banks and trust companies have experienced people to handle the difficult task of being a personal representative and — since the fee paid to a personal representative is determined by the size of the estate, not by who serves as personal representative — banks and trust companies are generally paid the same fee to serve as personal representative as an individual is paid.

What is a trust?

A trust is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints someone (a "trustee") to manage your property and gives detailed instructions on how the property will be managed and distributed. A trust is one way to take care of a minor child, an elderly person or someone who needs help handling money. A trust may be established during your lifetime, and you may act as your own trustee, or it may be established by your will after your death. Trusts are generally more complicated to create than a will, and you may want to consider having an estate planning lawyer assist you.

Can a revocable living trust substitute for a will?

A properly drafted revocable living trust can work well as a substitute for a will and sometimes may

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reduce the costs of handling your estate. However, even if you have a trust, most advisors would recommend you also have a will to cover the possibility that some of your assets may not be covered by the trust at the time of your death. Whether a trust is proper for your estate is a decision to be made after receiving competent legal advice.

Is a will expensive?

No, a simple will is not expensive. However, the cost of any will depends on how much work your lawyer does for you. As a will becomes more complicated, the cost rises. Ask your lawyer for an estimate of the cost. In general, the trouble and expense of not having a will far outweigh the cost of the will.

Do I need a will if I don't have much money?

The amount of property you own does not determine whether you need a will. Your personal and financial circumstances determine when and how a will should be drafted. For example, it is important for new parents to have a will to provide for their children even if they own little personal or real property.

What are estate and inheritance taxes?

Estate taxes are the taxes that need to be paid out of your estate after you die. For the year 2008, estates worth over $1,000,000 are taxable by the state of Oregon, and estates worth over $2,000,000 are also taxable by the federal government. These amounts are scheduled to change in 2009. Please see your advisor before making any changes based on them. An estate planning lawyer may be able to draft a will, trust or other document, as well as give you advice, to help reduce the amount of taxes your estate may owe upon your death.

Is a will from another state valid?

Yes. Generally, if you made a will in another state according to the laws of that state, it is valid in Oregon also. This is also true if you created a trust in another state.

Can a will be changed?

You can change your will at any time as long as you are of sound mind. Major life events such as marriage, divorce, death of a family member, or a new baby are good reasons to consider changing your will. In fact, in Oregon, marriage generally revokes any will you made before your marriage. You may revoke your old will by destroying it or by writing a new will. If you only want to make minor changes, you may create a "codicil," a document that is attached to your will. The same legal formalities are required for creating a codicil as a will, and therefore it is wise to consult an attorney about the changes you would like to make. In the meanwhile, do not write on your old will, because you may end up invalidating the entire document.

Should I consider having a medical advance directive and a financial power of attorney?

Yes. A will only takes effect after you die. An advance directive and power of attorney are documents that may be used to manage your health care and finances while you are still living. A power of attorney may be created for any purpose, but most commonly an elderly person will nominate a close friend or family member to be their "agent" to help manage their money. Because this power can be abused, it is wise to seek the advice of a lawyer before signing a power of attorney. An advance directive is a document in which a person appoints a "health care representative" to make medical decisions such as living arrangements and treatment options when they become incapacitated and unable to make their own decisions. An advance directive can be used to indicate whether you wish to have life support, tube feeding or other heroic measures when you are close to death. A power of attorney and advance directive can be excellent end-of-life planning tools. Both documents expire at death, or can be revoked at any time.

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Your Will