Lincoln Unitarian Foundation

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HOW TO MAKE A WILL THAT WORKS

Some estate plans are more effective than others. What many of the best plans have in common, however, is a well-thought–out will designed to work in concert with other estate planning tools. This document offers general information that may be helpful as you plan for the long-term distribution of your property to family, friends, and charitable interests.

Before reading further, you might find it useful to take a few minutes to consider the "Four P's" of estate planning. List the following:

- People. Who are the people and charitable interest for whom you would like to provide?
- Property. List all of your property, in whatever form, along with its cost, today's value, and the way it is owned.
- Plans. Consider how you would like to "match" your property with the people in your life.
- Planners. List all professional advisors who would assist you in making your plans of reality.

Your will is just one part of an effective estate plan—but a vitally important part. In the pages that follow, you'll find answers to a number of commonly asked questions about making and revising wills.

1. **Is it true that most people don't have wills?** Yes. There have been published reports that over 50% of the more than two million Americans who pass away each year do not have valid wills.

2. **Why don't more people have wills?** Because they don't realize how important a will is. Some think they don't own enough property to need one. Some believe that life insurance and retirement plan beneficiary designations or joint ownership arrangements are sufficient. Some think their spouse inherits everything automatically. But others simply procrastinate.

3. **What happens when people die without a valid will?** Distribution of you estate is organized by familial relationship—closest relatives inherit first, and if there are no close living people then it goes out to quite remotely related people.

4. **Aren't state laws adequate for most situations?** No, because they're impersonal. They make no exceptions. They may also deplete your estate unnecessarily, whereas certain fees and other expenses can be minimized or eliminated through a well-planned will.

State laws are written to allow a court to decide who should be your administrator or who should be your administrator or who should be guardian of your surviving minor children. They cannot make bequests to friends and charitable interests. Only you can make such wishes known via a will, trust, or other arrangement in order to avoid this.

5. **How does "bonding" work?** Nebraska permits you to decide whether to require that estate administrators be bonded to ensure that they handle the estate honestly. This is a form of insurance. The non-refundable premium is paid from the estate. The bond can be waived in a will or trust, leaving more for your loved ones or for charity.

6. **Does everyone have an "estate"?** Yes, if they own anything at all. The term applies not just to real estate but also to cash, all personal property, investments, retirement plan assets, life insurance and other forms of assets.

7. **Doesn't joint ownership make a will unnecessary?** No, that's a common misconception. Joint ownership may create needless estate taxes and may result in gift taxes being due. It may also deny you complete control over your property while you're still living. Joint ownership is a poor substitute for a will, yet can often work well in conjunction with one.

8. **Can a will help reduce estate taxes?** Yes. Through a well-planned will, you can make a number of provisions that can reduce estate taxes that may otherwise be owed. You may also be able to direct which heirs will be responsible for the payment of taxes if you do not wish for them to be borne equally.

Remember that federal and state gift and estate laws change over time. Check with your advisors to make certain that your plans are designed to take maximum advantage of opportunities that can help minimize or eliminate estate taxes.

9. **Should both husband and wife have wills?** Yes. It's important that each has a will, even when the two wills are essentially the same. The wills should complement each other and take into account any special bequests to other family members.

10. **What is the "unlimited marital deduction"?** A spouse may leave all property to their mate and pay no federal estate taxes on the estate of the first to die. In your will, you can take advantage of the marital deduction and eliminate taxes in this manner. (Be sure to talk with your advisors, however, about ways your will and other plans can serve to reduce or eliminate taxes on the estate of the surviving spouse.

11. **Do I need a will in my estate is small?** Yes. The smaller the estate, the more important that it be settled quickly, as delays usually mean increased expenses. Besides your estate may be larger than you realize. Don't make the mistake of thinking of your property in terms of what it originally cost. In many cases, its value may have increased substantially.

12. **Can I write my own will without hiring an attorney?** You can, but it's generally not advisable. Many "homemade" wills are declared invalid by the courts. There is no substitute for the professional expertise of a competent attorney.

13. **How much does it cost to have an attorney write my will?** That depends on how simple or complicated your plans are. But wills generally cost less than most people expect and undoubtedly less than the emotional and financial cost of not having one. Ask your attorney in advance about the fee. It's a questioned answered routinely.

14. **Can I do anything to reduce attorney fees?** Yes. Attorneys charge for their time and knowledge, so the more time you can save them, the less the cost should be.

Take along all the basic information that will be needed. Make the "Four P" list described in the introduction. Remember to include your Social Security and Veteran Administration numbers (if applicable) and recent income tax records. Don't forget pension and profit sharing information. Be prepared to discuss whom you would like to be appointed to settle our estate and/or to be guardian for minor children, if any.

15. **Can I name my spouse as personal representative?** You can. Or a close relative, friend, or the trust department of a bank or another professional fiduciary may be named. Ask your attorney or other advisors for guidance.

16. **Must I get permission from the personal representative before naming him or her in my will?** You should. It's not a legal requirement but is a courtesy. Your assets or the terms of your will may dictate the qualifications necessary or a person to serve as your representatives and affect his or her willingness to serve.

17. **Should my will direct what compensation my personal representative is to receive for serving?** Fees are generally based on the size of the estate. The probate court will approve the representative's or administrator's fee, so it's not necessary to specify fees in the will.

If the personal representative is not a corporate entity but your spouse, a close relative, friend or beneficiary, he or she may choose to waive such compensation.

18. **After agreeing to serve, can a personal representative later refuse?** Yes, and this does occur for reasons of ill health, travel, or the press of other business. That's one reason it's wise to name an alternate.

19. **What happens if any personal representative dies before me and I have not named an alternate?** In that case, the court will appoint an alternate administrator who may not be the one you would choose. Naming an alternate representative, preferably someone younger than you, is important. Because of their permanence, a bank trust department or other professional fiduciary may be a wise choice to as alternate representative.

20. **What does the personal representative do?**

- Obtains the death certificate and provides copies to your insurance company, the Social Security office, and others.

- Notifies banks where you have accounts or safe-deposit boxes.
- Arranges for appraisal of your property, if required.
- Safeguards your property.
- Presents your will to the probate court.
- Defends your will if challenged.
- Locates witnesses to your will, if necessary.
- Collects debts due your estate.
- Advertises for any just claims against our estate and pays them in order of priority.
- Provides interim management for business interests, if necessary.
- Inspects and maintains your real estate.
- Collects rents if and when due.
- Completes and files state and federal estate and income tax returns, as required by law, in time to avoid penalties.
- Defends your estate against improper tax assessments.
- Establishes any trusts created by your will.
- Secures any payments due such trusts.
- Disposes of your property according to your instructions.
- Prepares final accounting and obtains receipts ad releases from heirs, if appropriate.

21. **Should I include funeral instructions in my will?** It is usually better to leave separate instructions and tell your relatives or close friends where to find them.

22. **Is my will confidential or can anyone read it?** A will becomes a public document at death, available to anyone who wishes to see it.

23. **How much detail should a will contain regarding the disposition of particular items of property?** Enough to prevent misunderstandings among heirs, but not in such detail that any sale of property before your death would cause confusion. It may be best to treat your property as a whole and divide it by percentages. Of course, your decision will depend on the amount and nature of the assets you are distributing.

24. **How far should I go in my will to try to foresee future events?** Think ahead on behalf of your heirs as much as is practical. Try to make bequests appropriate to their future needs and family circumstances while leaving them free to use their inheritance as needed.

25. **Should a trust be created in a will?** You may be able to reduce or eliminate taxes on both spouses' estates through the use of one or more trusts created in your will. Trusts can also relieve a surviving spouse of the problems of managing investments. Special trusts can enable you to make meaningful charitable gifts while providing your survivors with a life income. You attorney and other advisors can give you more information about trusts.

26. **Aren't charitable bequests made mainly by the wealthy or by those with no close relatives?** Not always. Many gifts by will are made by people who first provide for their loved ones and then choose to leave the remainder of their assets to charitable interests that have been an important part of their lives. Even a small portion of a typical estate can be a very meaningful gift when received.

27. **Is there a limit to how much I can give to charitable interests in my will?** Many simply designate a percentage of their estate to got to one or more charitable organizations of their choice. Some name specific property or specific dollar amount. Still others name one or more charities as final beneficiariy(ies) to receive whatever remains in the estate after other heirs are provided for.

28. **Is there a limit to how much I can give to charitable interests in my will?** There are no limits on the amount you can donate to a charity in Nebraska. You can give your entire estate to charity if you wish.

29. **Should I notify a charitable organization that I have included it in my will?** This can be a good idea. It can affect long-range planning, often in vital ways. We are always grateful to learn of a planned bequest and can sometimes assist by providing information about ways to give more effectively and assure that property will be used as intended.

30. **Is there any danger that my bequest may not be received as planned?** Yes, that can happen due to using an incorrect or unofficial name in your will, for example, especially since many charities have similar names. Be sure to obtain and use the correct legal name and address.

31. **How many witnesses does my will require?** Standard practice in Nebraska is 2 witnesses and a notary public. This is a "self proved will" under Neb. Rev. Stat. 30-2329. To be fair, you can do an entirely hand written will with NO witnesses—if it's all in your handwriting, not typed—but that's not recommended the way the self proved will is.

32. **Who can be a witness to a will?** A person must be mentally competent to be a witness. It is helpful if the witnesses are about the same age or younger than the person making the will.

33. **Must the witnesses read the will and know its contents?** No. They merely verify it is your will and that you have signed it in their presence.

34. **Is it legal for a witness to also be a beneficiary of the will?** Yes, but in some states such a witness may not receive property left to him or her under the terms of the will unless there are enough other witnesses to prove the will is authentic.

35. **Once I have a will, should I ever have to change it?** You should review your will periodically, because even the best wills can become out-dated. Adjustments ma be

called for if your marital status, financial status, or chartable interests change. If you have more children, if your designated personal representatives or guardians can't serve, or if you acquire property in another state, revisions may also be in order. Updating your will may require nothing more than a simple codicil (amendment).

36. **Am I required to change my will when moving to another state?** Most states will recognize a will drafted in a state where you previously resided (if the will was properly executed in that state). But it is always a good idea to have your will reviewed by an attorney in the state of our new residence.

37. **Once my will is completed, where should I keep it?** Sign one copy and keep it in your home, office, or bank safety deposit box, or ask your attorney to keep it. Retain an unsigned duplicate so you can check periodically to see if it needs updating. Note the location of the signed copy on the duplicate.

Note: In Nebraska it is not recommended that you place your will in a safe deposit box.. At the time of the renter's death the box is frozen until an executor/personal representative/trustee is appointed. If the document empowering them to be the executor/personal representative.trusteee in is the safety deposit box they will have a difficult time proving it. It is recommended that you put the will somewhere safe but NOT in a safe deposit box.

38. **Is there anything else I need to know about wills?** A document like this can cover a few basic points. Each person's circumstances and wishes are different – another reason you should consult with an attorney about your will.

For more information, please contact your professional advisor(s) at your convenience. The Lincoln Unitarian Foundation Committee members will be pleased to assist you and your advisors in appropriate ways upon request.