

Client Name:

Date Submitted:



**Index:**

The “Peace of Mind” Will Packet ..... 2

Why Everyone Needs a Will..... 3

Four Easy Steps to “Peace of Mind” and Family Protection ..... 4

**Will Form Questions..... 5**

**Guardian Appointments..... 6**

**Executor, Trustee and Trusts ..... 7**

**Specific Bequests ..... 8**

**Funeral arrangements..... 8**

**How You Want Your Estate Divided ..... 9**

**No Contest Provision ..... 10**

**Powers of Attorney and Directive to Physicians Questions.....11**

Information About Wills and the Basics of Texas Property Law ..... 13

    Probate Without a Will vs Probate with a Will..... 134

    Descendants, Children, and “After Born Children” ..... 14

    How Property is Divided According to a Will (or Divided Outside of a Will) ..... 155

    Use of Wills Across State Borders..... 156

    When do I need more complex estate planning? ..... 16

    Changing My Will ..... 16

**You can immediately get started** by signing this packet on page 4 and filling out information and making choices starting on page 5 and sending this form to us with your payment of \$350.00 per person. You can fill this form out on-line at [www.PeaceofMindTexas.com](http://www.PeaceofMindTexas.com) and make secure payment with a credit card on-line, or you can mail this completed and signed form to us with your \$350 check to Enos Legal Services, P.O. Box 234, League City, Texas 77574. *Revised 2/24/2025*



## The “Peace of Mind” Will Packet

Every adult should have a signed Will to help their families upon death, as well as powers of attorney for medical care and finances in case disability requires someone else to make decisions.

Many people avoid doing the responsible thing because death and disability are unpleasant topics, or it may seem like there is plenty of time left, or because of the cost.

The “Peace of Mind” Will Packet prepared by attorney Greg Enos costs only \$350 per person. Many lawyers charge \$1,200 or more for similar services. Documents may be available on the Internet at cheap costs, but you deserve to have a real attorney help you with the creation of your Will and other documents, and a legal team to answer your questions and consider your options. The \$350 price includes phone or Zoom consultations with a lawyer if needed and phone calls from a legal assistant to make sure the documents created are right for you. **\$25 of each fee paid will go to a charity you select.**

The “Peace of Mind” Will packet includes:

- Last Will and Testament
- Statutory Power of Attorney for financial affairs in the event of disability
- Medical Power of Attorney
- Directive to Physician
- Form and instructions for Texas Out-of-Hospital Do-Not-Resuscitate Order
- Forms for making gifts of personal property outside your Will
- A form for Codicils to make future changes to your Will
- Information to help guide your family in the event of your death
- A practical checklist: “Preparing for Death – How to Make It Easier on My Family”

### Signing the Will

The typed Will we prepare for you is not effective until you sign the Will before a notary public and two witnesses, all three of whom sign the Will too. We also ask you to initial each page of your Will.

**Footnote:** We capitalize the word “Will” when referring to a person’s Last Will and Testament, even though under proper English usage, the word is not capitalized. However, it is confusing to read, “Your will will provide...,” for example. As attorneys, we know how important it is for every adult to have a valid Will, so we emphasize the document’s importance by capitalizing it.



## Why Everyone Needs a Will

If you die without a Will, you do not get to decide who will inherit your money, real estate, property, belongings, insurance, and retirement benefits. Instead, your estate will be divided according to Texas law. Without a Will, your siblings and grandchildren will not likely inherit anything from you. Your estate could be tied up in a lengthy probate process involving a court-appointed attorney, filing fees, and a court hearing—all paid for with money taken out of your estate, reducing its value available to your heirs.

With a Will, you get to decide what happens to your property and who gets what part of your estate. The person you choose to be your executor sees to it that your property is distributed in the way you intended. If you are married and you die without a Will, your estate will be divided under state law depending on whether it is classified as separate or community property (see detailed discussion on page 5).

If you have children from a previous relationship and are now married, a Will is even more important. This is especially true if you have children with your new spouse. Also, a person without a Will leaves nothing to siblings, friends, charities, or grandchildren (unless the grandchild's parent – your child – has died before you).

The probate process in Texas is faster and cheaper if you have a Will and it often makes it easier on your family when you die, because your wishes are made clear and your survivors have fewer decisions to make, and are less likely to argue with each other.

A Will can also state who you want to be the guardian of your minor children if you die, although your wishes are not absolutely binding on the court (and the other parent always is presumed to get the children unless there are really good reasons why he or she should not).

In summary, in Texas, as in most states, without a Will, your property is distributed to your heirs in a manner as defined by state law. If no relatives are found, the state gets to keep whatever property is involved. Heirs include your surviving spouse, children, siblings, parents, aunts, uncles, nieces, nephews, or cousins. With intestate succession, or the process of dividing your assets if you die without a Will, heirs have no say in the matter. The courts get to decide how the property will be distributed. The process can take months or years to play out, depending on the size of the estate.

The best way to proceed, before it's too late, is to hire a lawyer to ensure your Will is legally written, properly filed, and easily accessible to your heirs.

A Will can give you peace of mind, knowing that your wishes will be known and followed when you pass away.

Additionally, a power of attorney allows a person you select to make financial or medical decisions for you if you are medically incapable. If you are in a coma or on a breathing machine and sedated, someone may need to help the doctors decide on treatments and you will need someone to take care of your bills and financial affairs.

# Four Easy Steps to “Peace of Mind” and Family Protection

You only have to follow these four easy steps to get peace of mind and family protection:

**Step 1:** Sign this agreement, completely fill out this form, and return the entire packet to:  
Enos Legal Services, P.O. Box 234, League City, Texas 77574  
-or- Email to: Wills@enoslaw.com

My name is \_\_\_\_\_. This agreement is between me and attorney Greg Enos (“the Attorney”). I agree to send this completed form with \$350.00 (according to the payment instructions below) to the Attorney, who agrees to prepare a complete Affordable “Peace of Mind” Will Package for me according to the choices I select in this form. That package will consist of a Simple Will, Statutory Durable Power of Attorney, Medical Power of Attorney and Declaration of Guardian. I understand that the Attorney will send these documents to me with instructions on getting them signed and copied. I will carefully read the documents and contact the Attorney if there are any mistakes or if I have any questions. My payment to the Attorney will not be placed in trust, but will be a fee earned by the Attorney on receipt. Changes required because of a mistake by the Attorney will be free. I also understand that the Attorney is representing only me in this matter and not my spouse, my family, or my heirs. Further, I understand that I may need to consult an estate planning specialist if my estate exceeds \$5 million in order to minimize estate taxes. I also understand that my spouse should also have a Will and other Estate documents. I understand that Enos Legal Services, LLC handles the billing for the Attorney. ***We believe in legal ethics! The State Bar of Texas investigates complaints against lawyers. The State Bar General Counsel will provide information on how to file a complaint. Call (800) 932-1900 toll free for more information.***

Signature \_\_\_\_\_ Date: \_\_\_\_\_

## PAYMENT INFORMATION

Pay \$350.00 as follows:

Mail this completed information form and payment to:

**Personal check, money order,  
or cashier’s check payable to,  
Greg Enos**

**Greg Enos  
P.O. Box 234,  
League City, Texas 77574**

**Step 2** When you receive the completed Affordable Family Estate Planning Package, carefully review it, and, if it is what you ordered, call us to schedule an appointment to finalize and execute the documents.

**Step 3** The documents we prepare must be properly signed and notarized. Witnesses are needed for the Will. We will send you home with copies of your documents organized in a binder.

**Step 4** On a regular basis, check your Will to see if it is up to date or if it needs any changes. Changes in family circumstances, such as divorce or remarriage may require you to rewrite your Will and/or other estate documents.



**This form is not a Will and has no legal effect. We will prepare the legal documents, including your Will, which must be properly signed and notarized to be effective.**

**Please refer to the explanations on pages 13 through 16 before starting this form.**

## Will Form

Attorney, Greg Enos, provides his affordable "Peace of Mind" Will Packet to be done in four easy steps:

1. You fill this form out completely and send it to us with your payment.
2. We contact you with any questions we may have and we draft the legal documents.
3. You review the documents we have drafted and ask us questions, request changes, and we finalize the Will and other documents.
4. You sign the Will and other documents with a notary public (and two witnesses for the Will) and you share copies of the documents with us and your trusted loved ones.

### Information on YOU:

Please fill out completely (we need FULL names, not initials)

Name: First: \_\_\_\_\_

Middle: \_\_\_\_\_

Last: \_\_\_\_\_

\_\_\_ Senior \_\_\_ Junior \_\_\_ II \_\_\_ III

Gender: \_\_\_ Male \_\_\_ Female

E-mail: \_\_\_\_\_

Cell Phone: (\_\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_, Texas 77 \_\_\_\_\_

County you live in (i.e. Harris / Galveston) \_\_\_\_\_

County where the Will is to be signed: \_\_\_\_\_



**Information: Spouse, Children**

Spouse:  I am not married  
 I am married to: \_\_\_\_\_ (full name)

Children:  I have no children  
 My children: Provide full names including middle (no initials) and birth dates

Name: \_\_\_\_\_ DOB \_\_\_\_\_

Name: \_\_\_\_\_ DOB \_\_\_\_\_

Name: \_\_\_\_\_ DOB \_\_\_\_\_

Name: \_\_\_\_\_ DOB \_\_\_\_\_

Do you want to include AFTERBORN CHILDREN in your will?  Yes  No

If you select "Yes", then the following will be inserted in your Will:

"If subsequent to the execution of this Will there shall be a child or children of mine born, or a child adopted by me on or before the child is eighteen (18) years of age, and if such child or children, or issue thereof, shall survive me, then in such event, such child or children, or issue thereof, shall share in the benefits of my estate equally [and to the same extent as my children hereinabove named and their issue]; and the provisions of this Will shall be deemed modified to the extent necessary to effectuate such intention."

**Explanation: Guardian Appointments**

A parent can designate a guardian for his or her children in the event the parent dies, but the decision on who to appoint as guardian is up to the judge. A parent’s choice is persuasive but not binding. The law presumes a child should live with a parent unless there is a strong reason why that would not be best for the child.

**Choices: Guardian Appointments**

Do you want to suggest guardians for your minor children?  Yes  No

Are you planning to designate the same guardians for all of your children?  Yes  No

I name the following to be Guardian of my minor children:  
Full Name: \_\_\_\_\_  
Relationship to me: \_\_\_\_\_

I name the following to be alternate Guardian of my minor children:  
Full Name: \_\_\_\_\_  
Relationship to me: \_\_\_\_\_



## Explanation: Executor, Trustee and Trusts

Your Executor is a person designated in your Will to handle the paperwork involved in the probate of your Will, the payment of your debts, and the distribution of your assets. Usually, an attorney represents your Executor, so you do not need to choose someone who knows a lot about the law or finances. It is best to choose someone you trust to be fair and diligently follow your wishes. Most people name their spouses as their Executor unless the spouse is older and/or disabled. Often people list one of their children, or perhaps a trusted, responsible sibling or friend to be their Executor. You should also designate a successor or “backup” Executor to serve in case the first person you designate cannot qualify as Executor for some reason.

If any of your estate is to be inherited by a minor child or young person, then you need to select a person to be the Trustee for the funds or property. Often, people just designate the person they selected to be their Executor to be the Trustee. If you die many years from now, some of your Estate could go to a grandchild or great grandchild, so do not assume a Trustee is not needed just because your children are all grown. You also need to decide if you want the Trustee only if the child is under 18, or maybe you think a young person might not make good decisions and so a Trustee is needed until age 21 or 25.

### Choices: Executor, Trusts for Children, Trustees

The Executor of your Estate - **Please make your choice below:**

**If you are married, our system will designate your spouse as your first choice for Executor.**

I name the following to be Executor of my Estate:

Full Name: \_\_\_\_\_  
Relationship to me: \_\_\_\_\_

I name the following to be the Successor Executor in case the person named above as Executor cannot or will not serve as Executor when I die:

Full Name: \_\_\_\_\_  
Relationship to me: \_\_\_\_\_

**Trustee** - In case you leave any property to any young person, you should designate a person to be Trustee of that property to safely invest and spend it for the child until he or she reaches a certain age.

**Please make your choice below:**

I name the following to be Trustee of any property left to any child or person under the age of:  
\_\_\_ 18 \_\_\_ 21 \_\_\_ 25 \_\_\_ other

Trustee's Full Name: \_\_\_\_\_  
(can be the same person as your Executor)

Relationship to me: \_\_\_\_\_



I name the following to be Successor Trustee in case the person named above as Trustee cannot or will not serve as Trustee when I die:

Full Name: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

### Explanation: Specific Bequests

Your Will determines who gets your entire estate. You may die many years from now, so we cannot list now all of your future assets. So, the Will says basically “my estate goes to \_\_\_\_\_.” If you want to leave a specific item to a specific person, you need to include a specific bequest in your Will. For example, you may want to leave all of your property to your spouse and if your spouse is not living, leave it all to your children. But maybe you own a grand piano and no one in your family plays the piano except your nephew Pedro. Your Will can include a specific bequest of your piano and say, “I give, devise, and bequeath my Steinway piano to my nephew Pedro Martinez Brown.”

### Choices: Specific Bequests

\_\_\_ I do not wish to make any specific bequests

\_\_\_ I wish to include the following specific bequests in my Will:

Property Description (Be specific!)	I Leave this Property to...
_____	_____
_____	_____
_____	_____
_____	_____

Attach a separate page if you need more space.

### Explanation: Funeral Arrangements

Your Will can let your loved ones know how or where you want your funeral conducted. Your Will can say that you want to be cremated, or that you want to be buried next to your parents or have “The Eyes of Texas” played at your memorial service.

### Choices: Funeral Arrangements

What funeral arrangements, if any, do you want your Will to include: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ cremation \_\_\_ burial at \_\_\_\_\_

\_\_\_ service at \_\_\_\_\_



## Explanation: How You Want Your Estate Divided

A person can divide his or her estate in many possible ways. The choices below are the options most (but not all) people select, depending on whether they are married or single. If the following choices are not what you want, type out in detail how you want your estate divided and send that attachment to us along with this form and we will call you to discuss if our Will preparation services can meet your needs.

### Choices: How You Want Your Estate Divided

Select the one choice appropriate for you, and fill in any associated blank:

\_\_\_ **I am married (if not married, skip to bottom of page):**

\_\_\_ I have children and I wish to leave all of my estate to my spouse and, if my spouse dies before me, then to my descendants (children, grandchildren, etc. - see previous page).

\_\_\_ I have step-children only and I wish to leave all of my estate to my spouse, and if my spouse dies before me, then to:

\_\_\_ My step-children

\_\_\_ My descendants (see discussion at page 6)

\_\_\_ \_\_\_\_\_

\_\_\_ I have children and step-children, and I wish to leave all of my estate to my spouse, and if my spouse dies before me, then to:

\_\_\_ My children only

\_\_\_ My children and step-children

\_\_\_ I have children and step-children, and I wish to leave all of my estate to my biological and adopted children only (not my step-children), and if my children die before me, then to my spouse.

\_\_\_ I do not have any children or step-children and I wish to leave all of my estate to my spouse, and if my spouse dies before me, then to any descendants I may have in the future, and if I do not have any descendants, then to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_ I wish to leave all of my estate to: \_\_\_\_\_ (use next page to provide details)

\_\_\_ **I am not married:**

\_\_\_ I have children and I wish to leave all of my estate to my children and descendants and if all of my descendants die before me, then to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_ I do not have any children and I wish to leave all of my estate to: \_\_\_\_\_ (use next page to provide details)

**Choices: How You Want Your Estate Divided (continued from prior page)**

\_\_\_ I wish to leave all of my estate to: \_\_\_\_\_

If you have specific items you would like to leave to specific people, please list them here.  
Be specific in order to avoid any confusion or disagreements later.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

You can write percentages: e.g. 40% to my wife and 60% to my children. You can list specific dollar amounts – e.g. – I leave the first \$5,000 of my estate to my friend Gladys O’Leary and the rest of my estate goes to my cousin Thomas Greene.

Additional details: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Explanation: No Contest Provision**

Many people thinking about death and their Will worry that their family members may argue over the terms of asset distribution. When this happens, the situation may lead to a Will contest, which can cost a lot of time and money for everyone involved. Will contests can also destroy family relationships for years. To prevent these possible future arguments, some Wills include a no-contest provision. A no-contest provision states that if any beneficiary of an estate challenges the terms of the Will in court, then they may forfeit their inheritance altogether. Some states do not allow no-contest clauses. However, these provisions are allowed in Texas Wills.

**Choices: Do you want your Will to have a no-contest provision? \_\_\_ No \_\_\_ Yes**



## **Explanation: Powers of Attorney and Directive to Physicians**

A Will only comes into force once someone dies. Most people in America are hospitalized before they die and often people are so sick that they cannot make their own financial or medical decisions. Every adult should have signed powers of attorney for financial matters and for medical decisions so that a trusted loved one can make decisions in the event of a coma or prolonged inability to function mentally.

### **Statutory Durable Power of Attorney**

A durable power of attorney allows a person you select in advance to take care of your finances, property, and investments in the event that you can no longer handle your financial affairs yourself. A durable power of attorney takes effect only if you are incapacitated. Under Texas law, a person is considered to be "incapacitated" for the purposes of a durable power of attorney if a doctor's examination finds that they are not able to manage their own finances. The doctor must provide a written statement certifying this finding of incapacity. Texas law provides a form for a durable power of attorney, but it is for finances only. This means that it only allows the agent you have selected to handle financial matters. It does not permit the agent to make decisions about the principal's health care.

### **Medical Power of Attorney**

A medical power of attorney allows you to select someone else to make health decisions on your behalf if you are incapacitated. You can limit or give unrestricted powers to the agent to make any type of medical decision, including ending your life. Alternate agents may also be selected in the event the primary agent cannot perform.

### **Directive to Physicians**

The Directive to Physicians is also called the "Living Will." It states that you do not want your life to be artificially prolonged by machines if there is no realistic chance of your recovery. This document allows you to make this decision now, while you are still able, instead of forcing the painful decision on your family if the time ever comes. If you are uncertain about filling out and signing a Directive to Physicians, you can always hold on to the form and fill it out later. Of course, the document is not effective until you do fill it out and sign it.

## Choices: Power of Attorney for Finances

The Statutory Durable Power of Attorney designates someone to be your agent with the authority to manage your financial affairs in case you are disabled and become unable to do so yourself. Most married people designate their spouse to be the primary agent and then select another person to be the secondary, or backup agent in case the first person named cannot serve.

### Please make your choice below:

I name the following to be my first choice as Agent for my Financial Power of Attorney:

Full Name: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

Does this power END on a certain date or No End? \_\_\_\_\_

I name the following to be Successor Agent in case the person named above as Agent cannot or will not serve as Agent:

Full Name: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

A Power of Attorney allows you to designate either General authority or Specify certain authorities. Most people choose General if they are designating a close trusted family member.

**IMPORTANT**: Do you want the Power of Attorney to be effective:

\_\_\_\_\_ Immediately OR \_\_\_\_\_ Only upon my incapacity

## Choices: Medical Power of Attorney

The Medical Power of Attorney designates someone to be your agent with the authority to make medical decisions for you in case you are disabled and become unable to do so yourself. Most married people designate their spouse to be the primary agent and then select another person to be the secondary, or backup agent in case the first person named cannot serve.

### Please make your choice below:

I name the following to be my first choice as Agent for medical decisions:

Full Name: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

I name the following to be Successor Agent in case the person named above as Agent cannot or will not serve as Agent for medical decisions:

Full Name: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

**IMPORTANT:** Do you want this designee to have limitations on this designation? An example would be that they do not have the authority to donate your organs. If so, please describe your wishes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Do you wish to specify a date the Medical Power of Attorney will end? \_\_\_\_\_

## Information About Wills and the Basics of Texas Property Law

A Will transfers 100% of a single person's property (except for a co-owned property, life insurance, and accounts with beneficiaries). A Will transfers 100% of a married person's separate property and 50% of community property (except for a co-owned property and accounts/life insurance with beneficiaries).

*Community property* is all property acquired by both spouses during the marriage, including all cash, bank accounts, retirement, personal property, and real estate, unless it is considered separate property.

*Separate property* is property owned by a spouse before the marriage or acquired during the marriage by one spouse as a gift, an inheritance, or through some personal injury claims or lawsuit.

If a married woman's Will says that her brother is to receive all of the woman's estate, her brother will receive only her 50% interest in the community property house bought during the marriage. She can, however, leave her brother all of her shotgun collection that she inherited.

## Probate Without a Will vs Probate with a Will.

Texas law makes the probate process relatively easy and fast if a person dies with a valid Will. Probate can take as little as 30 days if there is a valid Will and no disagreement between the heirs. Probating a Will in Texas begins by filing the original Will with the probate court in the county of the decedent's residence at the time of his or her death. An Application for Probate is also filed with the appropriate court. The law then requires a 10-day waiting period before a hearing on the probate application starts. During this period, the county clerk will post notices to inform the public of the probate application. Absent any protest, the court will conduct a hearing to confirm the person is dead and that the Will is valid, and to appoint an Executor to handle distribution of assets. The Executor will receive official Letters Testamentary from the court that banks, retirement plans, and life insurance companies will recognize as giving the Executor the right to withdraw or



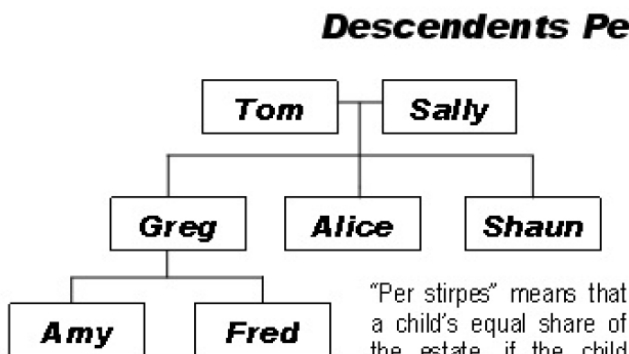
distribute the funds. The Executor must inventory the estate within 90 days of the hearing, notify beneficiaries of the Will, post a notice to creditors, resolve debts, distribute property according to the Will, and file the decedent's final federal income tax return.

Probate of an estate for a person with little property and no Will is also pretty straight forward in Texas and can be done in several ways depending on the property involved. However, probate without a Will is a good deal more complicated if one or more beneficiaries are under 18, or if there is significant property, or the heirs are in disagreement. These situations require a dependent administration supervised by the court, and so a lot more paperwork and lawyer time is required.

## Explanation: Descendants, Children, and “After Born Children”

The words we use in a Will and the definitions of those words we select are very important.

The Will we will prepare for you will leave your estate to your spouse, or children, or specific persons whose names you provide us. However, if those heirs listed in your Will are not alive when you pass away, then the Will we create for you will leave your estate to your descendants. “**Descendants**” means your children related to you by birth or adoption and their offspring (your grandchildren, etc.). “Descendants” does not ordinarily include step-children who are not adopted. If you have step-children, you can leave them a share of your estate if you wish. A Will that leaves property to step-children will include step-children in the definition of “my children.” When your Will says that your estate is left to “**my descendants [or children] who survive me per stirpes,**” it means each of your children will get an equal share of your estate, and if your child dies before you, then his or her share will get split among his or her children.



“Per stirpes” means that a child’s equal share of the estate, if the child has died, passes on to his/her children.

**Example:** Tom and Sally marry and have three children: Greg, Alice and Shaun. Greg has two kids: Amy and Fred. Tom’s Will leaves his estate to his wife Sally, and if she dies before him to his “descendants per stirpes.” This means that if Sally dies then Tom dies, Tom’s estate would be evenly divided between his three children. If Greg has died before Tom, then Greg’s one third share of Tom’s estate would be divided between Greg’s children, Amy and Fred.

If you die and none of your listed heirs are alive and you do not leave behind any living descendants, then your estate would go to your “heirs at law.” The Texas Estate Code defines the heirs of a person who dies without a Will, and those persons are considered your “heirs at law.” According to the Code, heirs at law generally starts with your spouse, then your children, then your parents, then your siblings, then your nieces and nephews, and then your cousins. Beyond that it’s essentially the closest person related to you.

## **Explanation: How Property is Divided According to a Will (or Divided Outside of a Will)**

In Texas, your Will determines who gets your probate property. Non-probate property is not controlled by your Will. Non-probate property goes to persons who you have listed as beneficiaries or otherwise contracted with. The most common types of non-probate property are life insurance and retirement accounts with listed beneficiaries, joint bank and brokerage accounts passing by survivorship, and property held in trust.

Once you have a valid Will, it is still very important that you be aware of your non-probate property and who it will go to according to the beneficiary forms you have signed.

Non-probate property includes life insurance proceeds, IRAs, and employee benefit plan proceeds, such as 401(k) plans and pensions. These assets and payments are non-probate property that pass outside probate to the persons named by the decedent in the appropriate beneficiary designations. These assets may be probate property if there is no beneficiary designation or the designation is not valid or if the beneficiary listed is “my estate.”

For example, if your 401(k)-retirement plan at work lists your children as your beneficiaries, they will inherit your retirement plan even if your Will says that all of your estate goes to your brother.

Joint bank, credit union, and brokerage accounts with a right of survivorship or pay-on-death account designations are also non-probate property. A bank account that is set up as a joint tenancy with rights of survivorship or payable of death account is owned by two or more people. When one of the people passes away, the ownership of the property simply passes on to the other account holders. For example, if you have a bank account and add your son as a joint owner with the right of survivorship, your son would receive the full account upon your passing. This option allows your surviving beneficiary to avoid probate since ownership is transferred directly.

A “transfer on death” deed is used to make real estate non-probate property. A transfer on death (TOD) deed is like a regular deed you might use to transfer your Texas real estate, but with a crucial difference: It doesn't take effect until your death. At your death, the real estate goes automatically to the person you named to own it (your “beneficiary”), without the need for probate court proceedings, and the property does not pass according to the terms of your Will.

Property held in trust is also non-probate property. This feature is one of the primary reasons for establishing trusts. The terms of the trust determine how the property is handled after the death of the trust’s settlor.

## **Use of Wills Across State Borders**

A Will signed in another state or country can work in Texas and vice versa. However, probate law is different in each state.

Texas makes probate much cheaper and easier by allowing independent administration with little court involvement, but a Will from another state may not use the right wording to allow your executor to serve independently. Also, Texas allows Wills to have a “self-proving” affidavit, which allows a Will to be probated without witnesses coming to court to testify. A Will from

another state does not usually contain such a self-proving affidavit. A person living in Texas with a Will prepared in another state is usually better off getting a new Will drafted in Texas.

## **When do I need more complex estate planning?**

Most lawyers agree that it is better to have a simple Will than no Will at all. However, some people need to consider more detailed (and expensive) estate planning. Very complex family situations sometimes require meeting with a lawyer to design a unique, customized Will. The most common reason for complex estate planning is the desire to avoid estate taxes. Federal estate taxes apply to all assets of an estate over a certain “exemption” amount. Currently, the exemption as of 2024 is combined gross assets for an individual exceeding \$13.61 million and \$27.22 million for a married couple. Unless Congress acts, the exemption goes back down to \$5.49 million for individuals and \$11 million for married couples after 2025. **If your total estate (assets minus liabilities) is now, or foreseeably could be, over \$13.61 million (or \$27 million for a married couple) you should consult a qualified estate planner in addition to executing a simple Will.**

## **Changing My Will**

You can change your Will at any time by signing a new version (with a notary public and two witnesses). You can also sign a Codicil, which is a short amendment to your Will. However, the Codicil must specifically refer to the Will it is amending and it must be signed by you and two mentally competent adults as witnesses. Our “Peace of Mind” Will Packet includes forms for you to change your Will in the future, although we suggest you consult a lawyer and consider an entirely new Will.