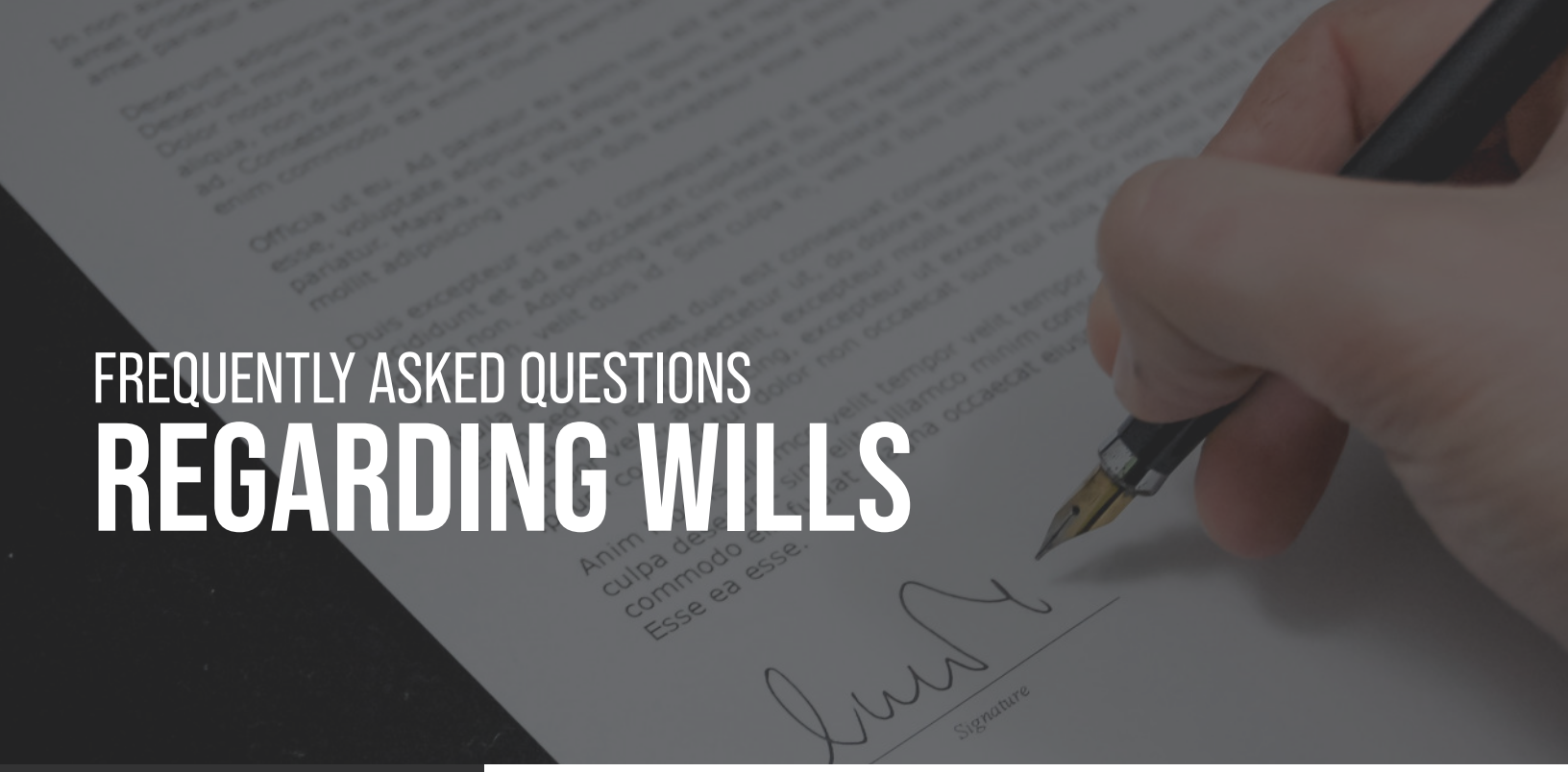


FREQUENTLY ASKED QUESTIONS
REGARDING WILLS

Gary B. Wells, Attorney at Law
9350 Hilltop Rd.
Argyle, TX 76226 (By appt. only)
940.220.3736

Wills are important regardless of estate size if you want control over how your property will be distributed.

TABLE OF CONTENTS

Q: WHY DO I NEED A WILL?

A. Every adult should have a will regardless of his or her financial net worth. If you die without a will, your property will be distributed according to the intestate laws of your state. Your property will be disbursed to your heirs and family members pursuant to the rules outlined in a statute, which may not necessarily be what you had intended. Thus, having a will ensures that your personal assets and belongings will go to family members, individuals, or charitable organizations you specifically designate to receive your property. Furthermore, if you have minor children, your will can include provisions to address who will care for and become the legal guardian of your children after your death.

Q: CAN I MAKE A HANDWRITTEN WILL?

A. The short answer to this question is, yes. Each state has different requirements pertaining to what is considered to be a valid will. So long as the requirements are met, a will will be considered valid even if it is handwritten. However, the safer practice is to have your attorney prepare a printed will that is then executed according to your state's requirements. You can be sure that a professionally drafted will disposes of your property in the way you intended and that it will be accepted by a probate court. A handwritten will may be more vulnerable to challenges.

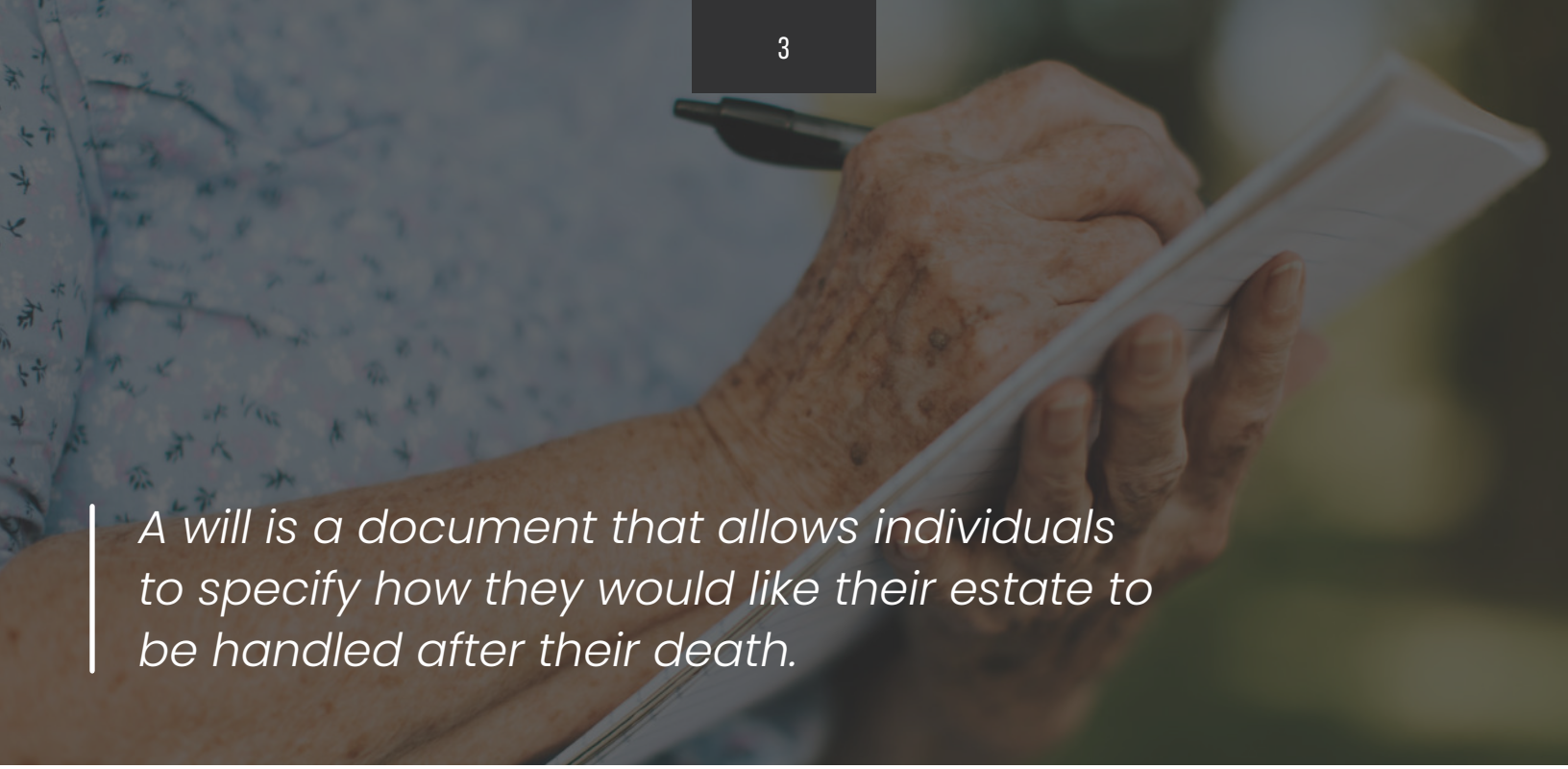
Q: WHAT ARE THE REQUIREMENTS FOR A LEGAL WILL?

A. Each state has its own statute outlining what is needed for a legal will. However, in general a will is considered valid, regardless if it is a handwritten or computer generated document, so long as the following conditions are met:

1. The individual writing the will is of legal age;
2. The individual is of a sound mind, or has testamentary capacity. Essentially this means that a person understands that he or she is making a will and further understands the nature and extent of his or her estate and that he or she is disposing his or her assets upon death;
3. The individual's intention is to make a will to dispose of his or her property;
4. The individual voluntarily signed the will, and was not under duress to do so;
5. The will properly disposed of the individual's property; and
6. The will was signed, and dated in front of two disinterested witnesses. A disinterested witness is not listed in the will as a beneficiary. The witnesses also need to sign the will.

Q: WHAT IS THE DIFFERENCE BETWEEN A WILL AND A HEALTH CARE DIRECTIVE?

A. A will is a document that allows individuals to specify how they would like their estate to be handled after their death. A health care directive on the other hand, is a document that allows individuals to state their wishes pertaining to end of life decisions if they are no longer able to make those decisions themselves.



A will is a document that allows individuals to specify how they would like their estate to be handled after their death.

Q: WHO CAN MAKE A WILL?

A. Any individual can make a will so long as he or she is of legal age (in most states 18 years of age) and is mentally competent. In other words, a person needs to know and understand that he or she is executing a will and making provisions to distribute his or her property to designated beneficiaries after his or her death.

Q: DO I HAVE TO HAVE A CERTAIN AMOUNT IN ASSETS TO MAKE A WILL?

A. No. Anyone can make a will (so long as they are of legal age and mentally competent.) The size of a person's estate is not a factor in who is eligible to make a will.

Q: WHAT PROPERTY PASSES UNDER A WILL AND WHAT PROPERTY DOES NOT?

A. Any property or assets that are titled in your name may pass under your will. Also, property that is titled in your name and with another person as "tenants in common" will pass under your will. Tenants in common is a type of ownership that allows each person to leave his or her ownership interest to specified beneficiaries in his or her will, as opposed to the other co-owner.

Assets that cannot be conveyed to others through a will are assets that "pass over" or "pass outside" of your will. Depending on the type of the asset it may pass directly to beneficiaries outside of the will. Some examples of these types of assets are:

- Property owned as joint tenants (this property passes directly to the surviving co-owner and can include real estate, vehicles, and bank accounts);
- Life insurance proceeds; retirement accounts, pension plans or IRA proceeds; some banking and investment accounts (these assets pass in accordance with beneficiary designations);
- Any assets placed in a living trust (these assets pass under the terms of the trust) ; and
- Personal property items of small value (typically these are divided in accordance with a personal property memorandum attached to your will or by agreement among your survivors or in accordance with your wishes as stated during your life).

Q: WHAT IS AN EXECUTOR, AND WHAT DOES HE OR SHE DO?

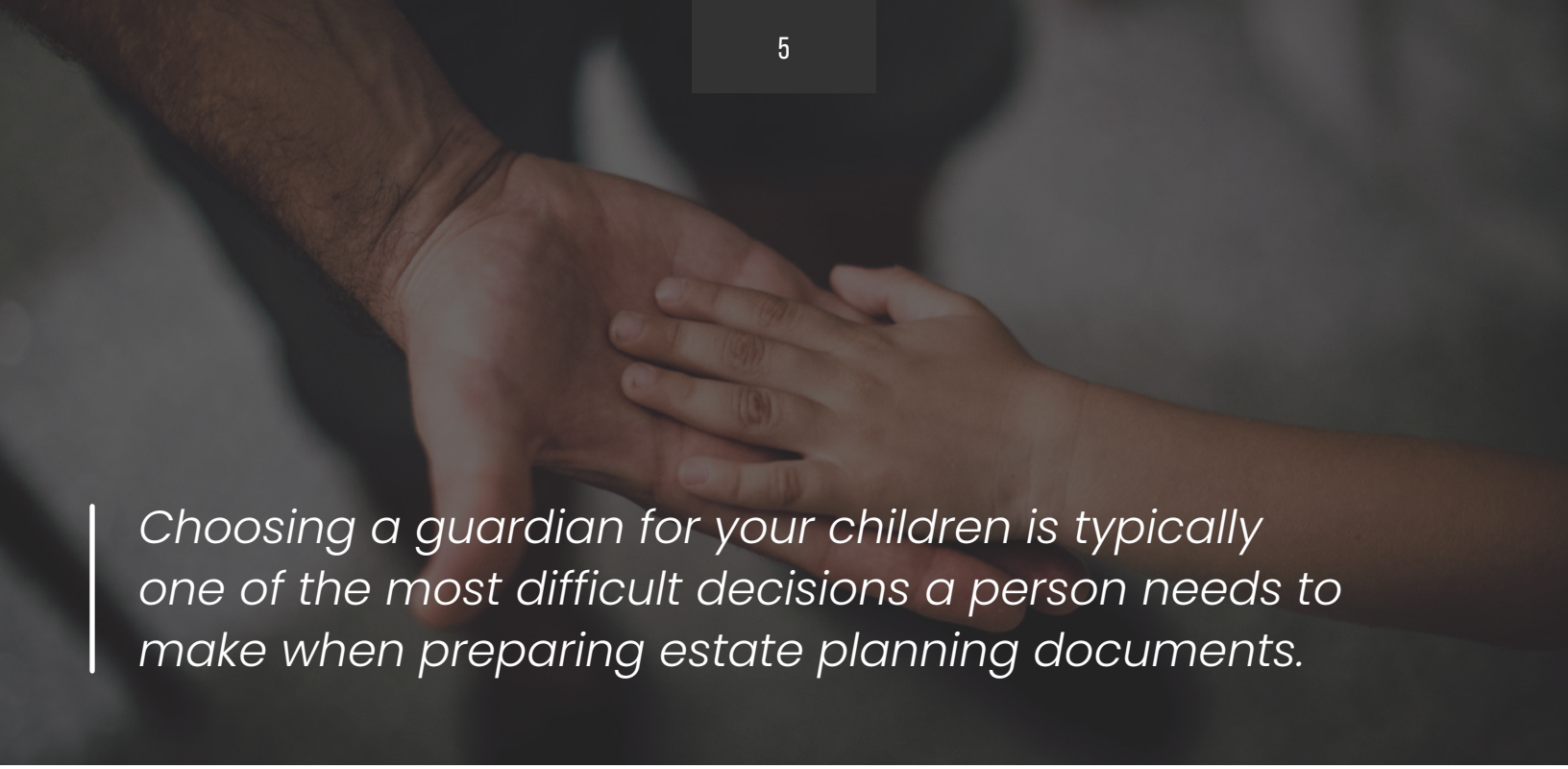
A. An executor is the person you choose in your will to handle the administration of your estate. An executor is sometimes referred to as a personal representative. His or her job is to carry out your wishes as specified in your will. Additionally, an executor's responsibilities include processing the will through probate, distributing the assets of your will to your designated beneficiaries, as well as handling your overall estate. Specifically, this entails such responsibilities as making burial or funeral arrangements; paying off debts and taxes owed by your estate, liquidating assets, and even temporarily running a business.

Q: WHOM SHOULD I CHOOSE AS MY EXECUTOR?

A. You should appoint as your executor someone that you trust and who is capable of serving. This can include a family member or close friend. However, you should keep in mind that those individuals may be grieving, so you should appoint someone whom you can trust to handle your matters during a difficult time. Common choices for executors are spouses; siblings, adult children, or close friends. You may not name a minor or a person who has been convicted of a felony to serve as executor of your will. Some states may have additional limitations or requirements if you choose someone who is out of state to serve as your executor. Typically, your attorney will suggest that you name an alternate person to serve as executor in the event that the first person you name is unable or unwilling to serve.

Q: WHOM SHOULD I CHOOSE AS GUARDIAN FOR MY CHILDREN?

A. Choosing a guardian for your children is typically one of the most difficult decisions a person needs to make when preparing estate planning documents. Two types of guardianships exist, guardian of the person, and guardian of the estate. The guardian of the estate is the individual named to manage the money or assets of the child, while the guardian of the person is the individual who steps in to serve as the child's parent if the parents are no longer living or able to do so. One person can serve in both roles or you can name a different person for each. You should choose people who share similar values, parenting styles and goals to you. Also, you may want to consider choosing someone who is young enough and/or physically capable of carrying out your wishes and able to serve as guardian until your minor children reach adulthood.



Choosing a guardian for your children is typically one of the most difficult decisions a person needs to make when preparing estate planning documents.

Q: CAN I DISINHERIT A SPOUSE?

A. The only way to ensure that your spouse will be disinherited is if your spouse agrees to it in a written, pre-nuptial or postnuptial agreement. Otherwise most states have some type of law that protects a disinherited spouse. Some states have laws that protect the disinherited spouse based on the length of the parties' marriage, or whether they have children. Other states have laws where a disinherited spouse may be entitled to a "right of election," which allows a spouse to take a portion of the deceased's assets.

Q: CAN I DISINHERIT A CHILD?

A. In order to disinherit a child, you must have a will in place. If you die intestate, or without a will, your property passes under the rules of intestate succession. Every state has a statute that outlines the order in which a deceased person's property will pass. Typically, a decedent's surviving spouse has priority followed by the decedent's children and then other heirs. If you have a will, you can disinherit an adult child in every state except for Louisiana, which has some limitations. A few states have rules in place that limit the extent to which a parent may disinherit a minor child. If you are intending to disinherit a child you should expressly state this in your will. A simple sentence such as "I intentionally have not provided any provisions under this Will for my child (state name)" will suffice. Expressly stating your intentions to disinherit a child in your will will ensure that your wishes are carried out, as most states have laws in place to protect children who were inadvertently or accidentally left out of the will. Without an expressly written statement of your intention, the law assumes that you made a mistake and will then include your child in the distribution of your property.

Q: WHAT IS A NO CONTEST CLAUSE?

A. A no contest clause is a provision in a will that penalizes any person who challenges your will or portions of your will. The purpose of the clause is to prevent the person who challenges your will from receiving anything under your will. Basically, the no contest clause uses the threat of not receiving any inheritance at all to dissuade beneficiaries from challenging the validity of the will. Many forms of no-contest clauses exist, but one such example is:

> "If a beneficiary contests the terms of this Will, including without limitation, filing a contest to this will in probate under [state probate code], that beneficiary shall not be entitled to take any property under this Will, and for all purposes of this Will, that beneficiary shall then be deemed to have predeceased me."

Not every state will enforce these provisions, so it is best to consult with an attorney in your state regarding this issue.

Q: WHAT IS A RESIDUARY CLAUSE?

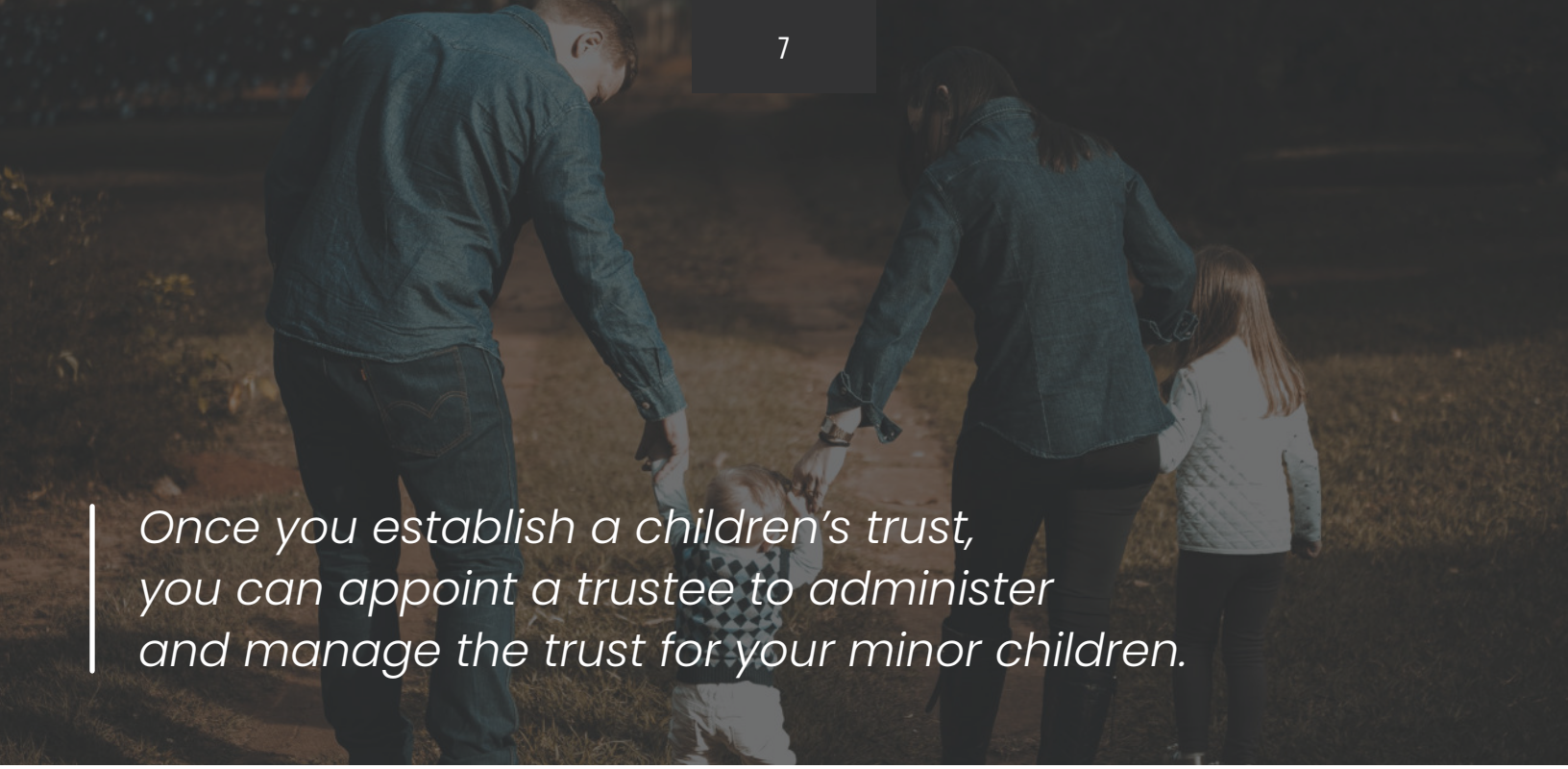
A. A residuary clause is a provision in a will that expressly disposes of any remaining estate property that was not distributed in the other provisions of the will. The residuary estate is the property that remains after all claims against the estate have been satisfied and all the specific gifts and bequests have been made. The residuary clause, therefore, provides for a specific person or multiple persons to receive this remaining property. The clause also covers assets or property that was acquired after a will was created. Without a residuary clause in place, any remaining property (the residuary estate) will be divided in accordance with the intestate laws of that state.

Q: CAN I LEAVE MONEY TO MY MINOR CHILDREN IN MY WILL? CAN I SET UP A TRUST FOR MY MINOR CHILDREN IN MY WILL?

A. The answer to both of these questions is yes. Money can be left to minors in a will; however because a minor cannot be on a title, or manage business or accounts in his or her own names, a court will appoint someone to administer the funds until the minor is 18 years of age. One solution to this issue is to establish a trust for your children in your will, which will effectively hold the money or assets for your minor children until they reach an age of majority, or until they reach an age that you determine would be beneficial for them to have control of their inheritance. Once you establish a children's trust, you can appoint a trustee to administer and manage the trust for your minor children.

Q: HOW DO I MAKE CHANGES TO MY WILL?

A. You can make changes to your will through a few different methods. Each state has different provisions or requirements, so it is best to consult with an estate planning attorney in your state (or an attorney at our firm) to ensure that your changes do not void your entire will. In some states, crossing out provisions and making handwritten changes could void your entire will.



Once you establish a children's trust, you can appoint a trustee to administer and manage the trust for your minor children.

One method of changing a will is through attaching a codicil. A codicil is a formal amendment to a will. It is a document that allows you to partially modify or revoke portions of a will. With a codicil, you can make simple changes to a will while leaving all the other provisions the same. It is signed and prepared in accordance with the rules pertaining to wills in each state.

Another method of making changes to your will without having to redo the entire will is by making changes to a personal property memorandum that is attached to the original will. This document will work so long as your original will references a personal property memorandum.

In some circumstances, it may be easier to write a new will altogether and revoke your original will.

Q: WHERE SHOULD I KEEP MY WILL?

A. After you have your will properly executed in accordance with the laws of your state, you should keep your will in a safe and accessible place. Make sure you let others, particularly the person you have appointed to be executor of your estate know where you will is located. If you choose to place your will in a safe, or fire and waterproofed box in your home, make sure you have provided others with the combination and location of the box. Placing your will in a safety deposit box at a bank could create additional challenges and delays after your death, as often an individual will need a court order to retrieve the contents in your safety deposit box. One solution to this problem is to have a safety deposit box in your name jointly with another individual. In addition, if you had your will prepared by an attorney, your attorney should also have a copy of your will and any other documents the attorney prepared for you.

Q: WHAT HAPPENS TO MY WILL AFTER I DIE?

A. After you die, your will must be submitted to probate. Usually the person whom you have named as executor of your estate, or your personal representative will submit your will to the court. Once your will is filed with the probate court, it becomes a public record.