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**FREQUENTLY ASKED QUESTIONS  
ABOUT WILLS, TRUSTS AND PROBATE**

Q. What happens if I die without a Will?

A. If you do not make a Will and do not use some other method of transferring your property (such as a trust), Michigan law will determine who gets your property. In Michigan, all property that is solely in your own name will pass as follows:

- If you leave a spouse, your spouse receives the following, depending on whether or not you have children:
  - If you do not have any children, or a surviving parent, then your spouse would receive all of your property.
  - If you any children with your surviving spouse, then your spouse receives the first \$201,000 of your property and one-half of the balance of your property.
  - If you have children, who are not the children of your surviving spouse, then your spouse receives the first \$134,000 and one-half of the balance of your property.
- If you do not have a spouse, then your property is distributed to your children and/or grandchildren. If you don't have children or grandchild, your property is distributed in the following order:
  - All to your parents, if they survive you, or
  - All to your brothers and sisters, or if they are dead, then to their children, your nieces and nephews, or if they all predeceased you,
  - All to your grandparents, or if they are dead, their children, i.e., your uncles and aunts, or if no blood relatives outlive you, then
  - All to the State of Michigan

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Q. Can I make a hand-written Will?

A. A hand-written Will is called a "holographic Will" and is valid in Michigan as long as it is entirely hand-written. The courts are very strict in determining whether a hand-written Will is valid and whether it will be enforced. Because most hand-written Wills do not cover all the areas that you wish to discuss, and because they are often not

properly written, it is recommended that you use a written, as opposed to hand-written, Will.

Q. Do I have to file my Will with a court or in public records?

A. During your lifetime, you do not have to file your Will with a court. Many people prefer to do so as a way of safekeeping the Will. However, upon your death, when a probate estate is opened, the Will must be filed with the court and will become a public document.

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Q. Does my Will ever expire?

A. Even an old Will can still be probated. However, certain events such as marriage, divorce or the birth or adoption of a child may change your Will even if you do not do anything to revise it. Also, if you move to another state, you should have an attorney tell you what effect the Will is going to have in your new state.

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Q. Can I disinherit someone?

A. You can leave anyone out of your Will without a problem, unless it is your spouse. If you try to disinherit your spouse, he or she is allowed to select whether your Will is enforced or whether he or she takes a portion of your property that is determined by the State. If you wish to disinherit children or treat them unequally, you may do so, but you should make this very clear in your Will and state the reasons why you are doing this. You do not need to leave \$1.00 to each person you wish to disinherit.

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Q. Can I change or revoke my Will after I make it?

A. You can revoke a Will at any time before your death by making a new Will or destroying the old one. You should make sure that you do not make changes to your Will by writing on it. If you cross out language or add a clause, your change may not be valid and the entire Will may be thrown out by a court.

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Q. If I make a Will, can I avoid probate?

A. No. Probate is the legal process for making sure your assets are passed to the correct people. The probate court looks at your Will and enforces its provisions. If you wish to avoid probate altogether, you should consider other methods, such as the use of a Living Trust.

Q. What actually happens in probate?

A. Probate Court simply makes sure that your assets are transferred to the correct people and not any imposters. Most banks and insurance companies are afraid of being sued if they give money to the wrong people, so they will not release any of your assets without an order from a court. The probate court is in place to protect your assets and your heirs.

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Q. Will probate tie up my assets for years?

A. No. In Michigan, a probate case must remain open a minimum of five months. That way, the court makes sure that all creditors are paid before the assets are all distributed. During that time, your personal representative can still administer the estate, i.e., pay bills, sell the house, close bank accounts, etc. Stories abound about probate tying up assets for many years. In many cases, this is due to events other than the probate court. If estate taxes are due, if a Will or Trust is unclear, if family members fight about the Will or distribution of property, then the probate is delayed until those issues are resolved.

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Q. Will the probate court take part of my assets?

A. If your estate goes through probate, there will be filing fees with the probate court and an inventory fee. In Michigan, the inventory fee is a sliding scale, i.e., the percentage is lower the bigger value of the estate and vice versa. Currently, the inventory fee is approximately ½ of one (1%) percent of the total value of your property.

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Q. Will the State of Michigan take part of my assets?

A. No. The federal government may require an estate tax if your estate is above a certain amount. The amount that is exempt from estate taxes each year is listed below.

- 2009 - \$3.5 Million
- 2010 - Unlimited (no estate tax)
- 2011 - \$1 million

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Q. If I divorce my spouse, do I need to make a new Will?

A. The law automatically provides that if you divorce, your ex-spouse is automatically deleted from your Will. However, it is always safest to re-write your Will to make clear that you are now divorced and that you wish for your ex-spouse to take none of your property.

Q. Who should have a Will?

A. The following are examples of people who should have a Will:

- A parent with minor children – so he or she can appoint a guardian, appoint a conservator (to manage the minor's money) and decide at what age(s) the money is released to the child(ren).
- Blended families – to make sure that neither family is disinherited.
- Anyone who is treating his/her children unequally.
- Persons without a spouse or any children.
- Persons who want a particular item to go to a certain person.
- Persons who want to leave some money to a charity.

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Q. Does joint ownership avoid probate?

A. Temporarily. With jointly-owned property, when one owner dies, the surviving owner becomes the owner of the asset without going through probate. However, if the final owner dies or if multiple owners all die at the same time, then the asset still must go to probate before it can be distributed.

Joint ownership also has other problems associated with it. When you give someone joint ownership of your asset, you are giving him/her all the ownership rights that you have. This means that they can treat the assets as their own. In addition, if she/he are sued, involved in a bankruptcy, or become divorced, the joint asset can become part of his/her property and his/her lawsuit. You also may be creating a capital gains tax, unnecessarily, when you make someone a joint owner.

Finally, if real estate is jointly owned, all owners must sign in order to sell or to refinance it.

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Q. If I have a Will, why would I want a Living Trust?

A. A Will does not avoid probate when you die. In addition, a Will has no effect during your lifetime. It only becomes effective after you die. If there is a period during your life in which you are physically or mentally unable to handle your affairs, your Will does not provide for someone to act for you while you are ill.

A Living Trust avoids probate and takes effect the moment you sign it. It allows you to appoint someone to take care of your affairs if you are still alive, but are incapacitated.

Q. Is a Living Will the same thing as a Living Trust?

A. No. A Living Will is another name for a Medical Power of Attorney or a Designation of Patient Advocate form. It names someone to act for you and make medical decisions in the event you are unable to do so for yourself. A Living Trust does not deal with medical issues, but allows people to handle your financial affairs, both during your lifetime and after your death.

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Q. Does a Living Trust help avoid creditors?

A. No. A Living Trust does not protect your assets from creditors. Any property in your trust is considered your property and can be attacked by creditors who are collecting a debt.

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Q. What are the benefits of a Living Trust?

A.

- Avoids probate
- Provides management of your assets in the event that you are incapacitated while still alive
- Is private
- Prevents court involvement
- Can delay or completely eliminate estate taxes
- Is very difficult to contest
- Can protect people with special needs
- Can protect “blended” families
- Can provide for professional management if a corporate trustee is used
- Can result in a quicker distribution of assets to your beneficiaries.

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Q. How can the law firm of Legal Strategies, P.C. help you?

A. Our office provides all of the planning and documents you need for your estate, such as:

- Appointment of a guardian for a minor
- Appointment of a guardian for a disabled adult
- Appointment of a conservator (to handle someone’s finances)
- Drafting Wills and Trusts, that clearly spell out all of your wishes
- Probate of a Will
- A Will Contest, i.e., a fight between heirs

**Please note that the answers to these frequently asked questions provide general information only. All situations differ and you should always consult an attorney before making any decision about the topics discussed above. These frequently asked questions, and their answers, do not create an attorney-client relationship between you and our firm.**