



THE FLOYD LAW FIRM PC

**Legal
Sense**

The Floyd Law Firm PC

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ESTATE PLANNING LETS YOU CALL THE SHOTS

One of the best things you can do for your family is to plan your estate—now. You can work with your lawyer to create a will or trust that assures your family will be provided for if something happens to you. This article will give you some ideas on how you can be sure that your estate plan will carry out your wishes and distribute your property exactly as you want.

Statistics show that fewer than half of American adults have wills, and the percentages actually seem to have dropped in the past few years. If you're one of the ones who hasn't gotten around to it yet, you run the risk of dying *intestate*, which means that the state would step in to make the decisions that you didn't make.

When the State Decides

State law specifies how your property is to be divided if you don't have a will or trust. The specifics vary by state, but the principle is that the state will assume that you wanted a portion of your property to go to your spouse, a portion to your parents, and so on.

That may work if the state's assumptions happen to match yours, but probably they don't. Maybe you wanted to apportion the amounts differently, or give property to a nonrelative, or to a relative who is not in the immediate family (a favorite niece, for example). And maybe you wanted certain items—a car, a family heirloom, etc.—to go to certain people. None of this will happen if you don't leave directions.

If you have minor children, your will can specify who is to be in charge of their upbringing. If you don't have a will, a court will have to decide, and that not only complicates the process but opens up the possibility that they may be placed in the care of someone you wouldn't have chosen.

Finally, if you don't have a will or trust, you'll probably complicate the whole process of **probating your estate** (paying debts and taxes, distributing bequests, and wrapping up your affairs). You open up the very real possibility of increased expense and delays in distributing your property, both of which could be harmful to your family.

When You Decide

There's no set formula for what goes into a will or trust. You and your lawyer should discuss what works for your situation in planning your estate.

Here are some suggestions on how to handle the more common clauses of a basic will or trust, assuming that the trust contains all or most of your property. This list is far from complete, but it will help you begin to plan.



Gifts of Property

The core of most wills or trusts is the section where you specify which recipients are to receive your property. Be sure to carefully identify the recipients, including their addresses and relationship to you—the last thing you want is confusion about who is to receive a gift.

Be sure to anticipate changes that might take place between when you write the document and when it comes into effect. What if one of your beneficiaries dies before you? Do you want that person's gift to go to his heirs, or to someone else you specify? Your will or trust can handle either alternative—but your lawyer has to know what your wishes are and try to anticipate any confusion that might occur because of how you describe the gifts you're making. For example, if the specific item of property might change between the time you write the docu-



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and the time you die, you might want to be general in your phrasing. Don't specify that you're giving someone 500 shares of a particular stock (you may sell it before you die and buy something else) but rather "my stock portfolio," or a specified percentage of it, or a dollar amount of the stock you own at death.

Remember also that your property may include intangible assets like insurance policies, bank accounts, certain employee benefits, and stock options. Some of these may pass outside of your will or trust, because of how they are held (i.e., if held in **joint tenancy with right of survivorship**, the property will pass automatically to the other owner on your death). Some may pass through **beneficiary designations** (i.e., employment benefits that go to your spouse). But some may pass through your will or trust. It's important for you and your lawyer to have a complete list of all the property you own and coordinate how all of it is to be passed.

You can save on taxes by using gifts wisely. This section of your will or trust can be used to give gifts to institutions and charities as well as to people.

Gifts of Real Estate

Most people prefer that their spouses receive the family home. If it isn't held in joint tenancy, you should have instructions about what will happen to it in your will or trust.

If you die before you've paid off the mortgage on your house, your estate will normally have to pay it off. If you're afraid this will drain the estate, or if you want the recipient of the house to keep paying on the mortgage, you must specify that in your will or trust.

Executors/Trustees

Your will should designate an **executor** and a successor in case he or she is unable to serve. (Your trust should do the same regarding its **trustee**.) It helps to spell out certain powers the executor can have in dealing with your estate: to buy, lease, sell and mortgage real estate; to borrow and lend money; to exercise various tax options. Giving the executor this kind of flexibility can save months of delay and many dollars by allowing him or her to cope with unanticipated situations.

Residuary Clauses

This is one of the most crucial parts of a will, covering all the assets not specifically disposed of in the will or

elsewhere. This is important because you may accumulate assets after you write your will, and if you haven't specifically given an asset to someone, it won't pass through the will. A **residuary clause** can give all such property to one or more beneficiaries. (If your will omits a residuary clause, the assets not left specifically to anyone would pass on through the intestate succession laws, sometimes after long delays and extensive court involvement.)

Testamentary Trusts

You can set up a trust in your will (a **testamentary trust**), or have your will direct funds from your estate into a trust you had previously established (your will would then be a **pourover will**). You would normally do so in a separate clause in your will.

Will or Trust?

You probably have a pretty good idea what a will does. In legal terms, it's a revocable document—which means that it can be altered as circumstances or your mind change—by which you transfer your property at death and designate someone to carry out your wishes. Wills have been around at least since the time of the ancient Egyptians.

Trusts are newer, and are gaining in popularity. Like a will, they permit you to dispose of your property at death, but they have a number of advantages that might be important to you. For example, **bypass trusts** are very useful in estate planning to lower taxes.

Revocable **living trusts** may not have tax advantages, but are helpful in several ways. They

Are relatively easy to set up and change (wills have more formalities)

Enable you to eliminate or minimize the probate process

Protect your privacy (unlike wills, they usually require no public record)

Help you manage your affairs while living (a trustee can take care of your investments and other property if you're incapacitated, or if you simply prefer to let someone else do it)

Permit you to direct how your property is to be distributed for a number of years (unlike wills, which make a gift of property at one time, trusts can last many years and enable your wishes regarding how your property is distributed to continue long after you die)

Your lawyer can help you assess whether a living trust or some other trust is appropriate for your circumstances.



The Legal Side of Marriage

When you say, “I do”, you are making a personal commitment to another person. What you may not realize is that you are also agreeing to a battery of new legal rights and responsibilities. More than 1,000 rights and responsibilities are automatically accorded to married couples. Marriage is a private bond between two people, but it is also an important legal institution.

Here’s a quick look at some of the things you agree to when you’re at the altar. If you have specific questions, your lawyer will have the answers.

Family Law

Married couples have a variety of rights and responsibilities with respect to family issues. Many of these rights will only be relevant if the couple divorces or separates. For example, marriage entitles a person to an equitable distribution of marital property upon divorce. (Most property that is acquired during a marriage is considered **marital** or **community property**.) Marriage also entitles a person to seek support (**alimony** or **maintenance**) in the event of a separation or divorce.

Health Care Laws

If you are married, you automatically have the right to visit your spouse in hospital if he or she is injured. It’s easy to take this right for granted—but if you are one half of an unmarried couple, such access could be denied.

If one spouse becomes incapacitated and can no longer make medical decisions, a court will usually name the other spouse as guardian or conservator to watch over his or her affairs. If the incapacitated person is unmarried, the court may name the adult children, siblings, or parents as guardians.

Wills and Estates

If you are unmarried and you die without a will, your property is distributed in accordance with state intestacy laws, which distribute property to your family. If you have a partner, then he or she could receive nothing, even if you have been living together for years. On the other hand, if you’re married and you die without a will, the state intestacy laws give your spouse rights to your property.

If you’re married, your spouse can’t disinherit you, no matter what he or she says in a will—you’re entitled to a share of the estate. Marriage also gives you preferential status to be named guardian or executor.

Government Benefits

The moment you marry, you have rights to certain government

benefits via your spouse, including survivor benefits under Social Security and a broad range of military benefits if your spouse is in the military.

Private Sector Benefits

If you are married, you may be entitled to health insurance through your spouse’s employer. You may also be entitled to the right to take sick-leave to care for your spouse or child. And as a minor money-saving bonus, you may be eligible for family memberships at gyms, clubs, and other organizations, as well as receiving family rates for auto insurance.

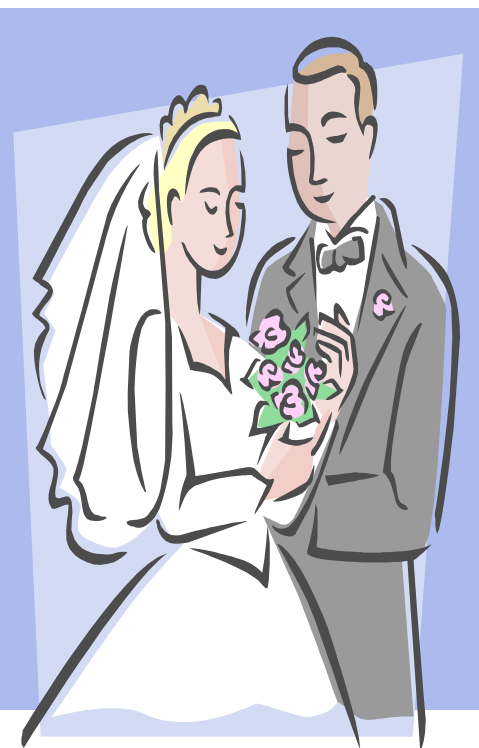
Other Rights

There are many other rights you may be entitled to if you are married, across a variety of legal areas. If your spouse is killed, you may have the right to sue a third person for **wrongful death**. If your spouse is injured, you may have the right to sue for **loss of consortium**. Marriage can give spouses the right to immigrate. And if one spouse is involved in criminal activities, the other spouse cannot be compelled to testify against him or her. If one spouse ends up in jail anyway, the other will have the consolation of visiting rights.

Sidebar: Domestic Partnerships and Civil Unions

If a couple is unmarried, each person must do a lot of additional paperwork—from writing a will to drafting powers of attorney for health care—to have the same rights as a married person. And there are some rights that married people are entitled to, such as the right to government benefits through their spouse, that unmarried couples cannot receive, no matter how long they have been together.

Some state and local governments allow persons of the same sex (and in some jurisdictions, persons of different sex) to register as domestic partners. The benefits and rights that arise from a domestic partnership vary from jurisdiction to jurisdiction. Common rights include eligibility for family health insurance, sick-leave to care for a family member or partner, bereavement leave, rights to visit a partner in the hospital, and the right to make health care decisions for an incapacitated partner. In Vermont, a law enabling same sex couples to enter into civil unions extends to lesbian and gay couples the effect of every Vermont law, regulation, and court precedent in the state that applies to married couples.



Look for new FLF website in November



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THE FLOYD LAW FIRM PC



Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have four attorneys who can handle almost every type of legal work which you, your family or your business may require. We take great pride in our team of lawyers, legal assistants, legal secretaries, and staff members. Each attorney, legal assistant and legal secretary is an expert in one or more fields. This expertise allows us to provide superior legal services in a number of fields of law such as Personal Injury Claims, Community Association, General Trial Work, Golf Industry, Estate Planning, Estate Administration, Elder Law, Real Estate Transactions, Family Law, Worker's Compensation, Wills and Trusts and Criminal Law. We hope you will meet our well-qualified team and allow them to work together for your benefit.

Website:

www.floydlaw.com

NEWS FROM THE FLOYD LAW FIRM

Stacy R. Larson joined FLF on 9/12/05 as a full-time real estate assistant.

Cassandra C. Stout joined FLF full-time on 10/24/05 as a paralegal for litigation, domestic and personal injury. She will be replacing **Bonnie L. DeZwart** who is retiring.

Holly Holloway joined FLF as a part-time real estate assistant on 10/25/05.

Attorney **Sonia M. Raymond** will celebrate her 2nd year with FLF on 11/17/05. Congratulation Sonia !

Judy L. White will celebrate her 21st year with FLF on 11/19/05 . Congratulations Judy!

Peggy Sue Ross started her new job as Real Estate Coordinator on 10/24/05.

Dalton B. Floyd, Senior Partner, was awarded the "Order of the Palmetto" by Governor Mark Sanford on September 14, 2005 for his work with The South Carolina Commission on Higher Education. Congratulations Dalton!

Good News on Credit Reports

A new law, the Fair and Accurate Credit Transaction Act (FACTA), helps you make sure that your credit report is error-free. Under the law, you have the right to one free credit report a year from each nationwide consumer reporting agency.

The free annual credit report provision of FACTA is being implemented in a staged process over a nine-month period from December 1, 2004 to September 1, 2005, beginning in the west coast states and rolling across the country. The last region to get access to free annual reports will be the Northeast. You can get your free credit report from the credit bureaus' centralized site: www.annualcreditreport.com (which also has the map showing when reports will be available in different regions of the country) or by calling 877-322-8228. The three nationwide consumer credit reporting agencies (Equifax, Experian and TransUnion) get their information from different sources, so credit reports from each agency may look a little different. Some financial advisors recommend staggering your requests over a year so that you see a report every four months or so.

The new law also gives you the right to know your credit score. Your credit score attempts to determine how likely it is that you will pay your debts. Your credit score may determine whether you are able to get a mortgage or the credit to buy a car or truck. Your score takes into account your payment history, the amount of your outstanding debt, and many other factors. FACTA requires consumer credit reporting agencies to give you, upon request and payment of a "fair and reasonable fee," your current credit score and related information. National consumer credit reporting agencies appear to be charging consumers between \$4 and \$8 for a current credit score (depending on the consumer's state of residence).

Another key change made by FACTA is that now you may dispute inaccurate information directly with the furnishers of information, as well as with the consumer-reporting agency, as was previously required. Under the new law, furnishers must investigate all disputes and can't report negative information while an investigation is pending.

As a business owner, you're probably always on the lookout for ways you can save money and minimize risk. One of the best ways to do both of these things is to anticipate legal problems and cut them off before they become a big deal.

From time to time, ask your lawyer to do a review of the legal side of the business. This kind of legal audit can uncover omissions that could be troublesome, such as the absence of corporate minutes. It can point out changes you need to make in documents as a result of new laws and regulations. And it can provide you with the opportunity to discuss potential problems and be better able to deal with them, at an early stage when they can be resolved efficiently and cost effectively.

Some companies do a legal audit a month or so before the end of the company's taxable year. This enables the audit to include year-end tax planning issues. You can often save substantially on taxes by either completing a transaction in the current tax year or deferring the transaction until the next taxable year.

Many businesses have the audit done a month or so before the company's annual meeting and use the audit as a planning vehicle for action that needs to be approved at the annual meeting.

Here are just some of the issues you can review in your legal audit:

- ◆ basic constituent documents, such as the articles of incorporation, bylaws and stock transfer records of a corporation, the articles of organization and operating agreement of a limited liability company or the partnership agreement of a partnership. Reviewing these periodically can disclose issues that need to be addressed because of changing circumstances or laws. It might even be advisable to change from one kind of business (a partnership, let's say) to another (a corporation);
- ◆ employment agreements;
- ◆ all leases, licensing agreements and other contracts with third parties, with particular emphasis on termination dates, renewal options and the like;
- ◆ insurance policies;
- ◆ all standardized contract forms used by the business, for example, purchase order forms, warranties, brochures and the like;
- ◆ internal policy and procedural manuals, for example, an employee policy and procedure manual, or an antitrust compliance handbook;
- ◆ transactions that require additional documentation, such as official minutes;
- ◆ regulatory compliance—for example, assumed or trade name filings, environmental regulations, ERISA problems, Securities and Exchange Commission requirements;

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structural changes in the business organization—for example, conversion to another business form, adoption of a retirement plan or a fringe benefit plan;

filing of annual reports with the Secretary of State and other regulatory bodies;

tax planning issues, for example, S Corporation status, legal audit, alternative minimum tax review;

filing of tax returns, licenses and reports;

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 - ◆ structural changes in the business organization—for example, conversion to another business form, adoption of a retirement plan or a fringe benefit plan;
- filing of annual reports with the Secretary of State and other regulatory bodies; tax planning issues, for example, S Corporation status, legal audit, alternative minimum tax review;
- filing of tax returns, licenses and reports;
- pending and potential litigation involving the company; and
- recent legal developments affecting the business.