

# ASK AN ATTORNEY

## WHY DO I NEED A WILL?

### **If I die without a will, where does my property go?**

For one thing, it won't go to the State of Arizona unless you essentially have no blood relatives. If the property is not held jointly and it has no beneficiary designations, the property will go in accordance with Arizona intestate succession law. For example, if you are married but have children by a prior marriage, on your death, Arizona law dictates that your spouse will get half of the estate and your children will get the other half.

### **What does it mean when a deceased person's estate "goes into probate"?**

Probate refers to a method by which your property is administered and processed through the court system after you die. The probate court appoints a personal representative (executor) who then has authority to access bank and investment accounts, sell real estate, pay creditors, and to distribute the estate assets in accordance with the will or intestate succession law. In return for the authority given to the personal representative, the personal representative must comply with a complex set of rules imposed and supervised by the probate court. The average probate case in Arizona takes about a year and costs about \$5,000.00.

### **Are all estates probated?**

No. For example, if you are married and hold all of your assets jointly, when you die those assets will automatically go to your spouse without court or lawyer involvement. If you have bank or investment accounts, you can avoid probate with them if you designate payable upon death beneficiaries.



Article provided by Steve Biehn at the law offices of Wachtel Biehn & Malm. Visit [www.wbmlaw.com](http://www.wbmlaw.com) for more information.

Also, small estates don't have to be probated. A small estate is defined by Arizona law as being those estates when the real estate equity is valued at less than \$75,000.00 and the non-real estate is valued at less than \$50,000.00 in the aggregate. Through a non-probate affidavit process, your heirs can access and transfer these assets without probate.

### **Does having a valid will prevent probate from happening?**

No.

### **Are revocable living trusts used to avoid probate of one's estate?**

Yes. For estate planning purposes, you can think of a trust as your own private company that owns substantially all of your assets. As trustee of your trust, you have 100% control over the assets. You manage the trust estate assets for your benefit just like you are doing now. When you die, the trust document creating your trust provides who takes your place as trustee. This successor trustee immediately has control of the assets in the trust estate without going to court to get that authority. The successor trustee can liquidate your assets, pay the bills and distribute the trust estate assets pursuant to your trust's direction. In most cases a trust administration will have no court or lawyer involvement. The sole purpose for this kind of trust is the avoidance of probate. The average cost of a trust and all of the ancillary documents that go with it such as powers of attorney, pour over wills, deeds, etc. is about \$1,000.00. Once your entire plan is in place, the feeling of finally "getting it done" is priceless.