



American Cancer Society Circle Of LifeSM
Cancer Education and Wellness for American Indian and Alaska Native Communities

Wellness along the Cancer Journey:
Nearing the End Of Life
Revised October 2015

Chapter 6: Overview of Wills



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for American Indian and Alaska Native Communities

Overview of Wills

Group Discussion			
	True	False	Not Sure
1. A will needs to be updated every year.			
2. Birth of children and other life events are important when creating a will.			

A will is a written legal document in which an individual states what their wishes are for his or her property/estate after death, who they want to carry out (execute) the conditions of the will, and who should have custody (guardianship) of their minor children.

Some people think that wills are only for rich people. But just about everyone who has assets or properties (like bank accounts or other funds, a car, a home, or land) needs a will to be sure that those things go to the people they choose.

There are several requirements for drawing up a will. A person has to be of legal age (18) and of sound mind. A will must be also signed and witnessed by at least two people.

A qualified health care provider should be consulted before preparing a will if a person has had mental illness or if a disease may be affecting a person's decisions or thoughts. Consulting a health care provider is important because it will help be sure of a person's mental competence. This will be useful should the will be challenged later based on mental incapacity.

If a person is married it is important that both they and their spouse draft wills in case one spouse dies before the other. Usually the other spouse is named as the primary beneficiary (the person who gets most of the assets belonging to the one who died) and a substitute person should be identified if both spouses pass away at the same time. This should be done even if all the assets are mainly in the name of one spouse.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

If a person is living with someone but not married and they want their significant other to benefit from the estate, it is even more important to prepare a will. When a person dies without a will, there are no laws to help unmarried partners get anything. This means that if a person dies without a will (*intestate*), their partner would not get anything from the estate.

Once drafted, the will is binding until invalidated. A will may be invalidated by the person who wrote it in one of three ways:

1. By destroying it, with the intent to revoke it.
2. By drafting a new will that replaces and invalidates the old will.
3. By marriage or re-marriage, unless a person deliberately states that their will was drafted in consideration of the marriage.

Outside of one of these three circumstances, the will remains valid for an unlimited period of time.

Differences Between a Living Will and a Will/Testament

A living will is a legal document that goes into effect if a person becomes so ill or injured that they are unable to make responsible health-care decisions. A living will is certainly different from a last will and testament, but it does indeed express the will (wish) of the person writing it when they can no longer speak. It's called a living will because the person is still alive when the will goes into effect. A living will is recognized in most states. If a person does not live in one of the states that recognize living wills, there are other options to decide the type of medical care they will receive. Other advance directives are available, such as a durable power of attorney for health care to appoint a health-care agent or proxy.

A last will and testament only takes effect after a person dies, and it is only about who gets belongings such as money or other assets. The person writing the will must choose the person who will execute (carry out the wishes in) the will.

The Importance of a Will

It is important to have a valid will because, without one, a person does not have the power to control who will take over their property after their death. If they

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

die without a will (intestate), their property and possessions (which are called their *estate*) will be divided according to law. This division of property is likely to conflict with how they would like distribute their property.

Writing a will permits a person to clearly name those who will inherit their property and lets their family know that they thought about their needs. They can also say who will be responsible for managing their property. They can name a guardian for any minor children they have, if the children are left without parents.

The will can also be used to state preferences for funeral arrangements, organ donation, or for donating the body to science. Additionally, creating a will provides a person with the chance to reduce the amount of Inheritance Tax that will have to be paid. This is particularly important if they have valuable assets or a highly valued home.

What to Consider When Writing a Will

Think About Who to Name as An Executor. This is the person or persons who will manage the estate after the person's death so that it goes where the person wants it to go. Identifying an executor is even more important if a person's assets (belongings) are considerable. The executor should be someone who is honest and trustworthy. It's good to name a back-up executor, too, in case someone doesn't qualify or can't do the job. A person does not need to finalize who will be the executor, but should at least name two or three potential executors.

Choose a Guardian. If a person has children below age 18, they should appoint someone as a guardian. Usually, their spouse will be the guardian if one parent passes away, but someone else should be named as a substitute guardian in case both parents die together or if the spouse passes away first. Guardians are most often relatives or friends who love and have a relationship with the children.

Identify Beneficiaries. These are people who would benefit from a person's assets. Usually, beneficiaries are family members, relatives, friends, or a charity group. If a person chooses to leave everything to a spouse or one person, then they should name substitute beneficiaries in case the one person is no longer living.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

List Assets: Create a list of assets including property, bank accounts, shares, vehicles, jewelry and anything else of value.

Who Gets What: This is where a person decides who will receive their assets. If they intend to give a certain asset to more than one person, it is better to use a percentage rather than a fixed dollar value.

Use the list in Appendix C to create a list of assets and other important information a family may need to know.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Updating a Will

Someone may need to update their will for a number of reasons. Frequent reasons for reviewing and updating a will include:

- ***Changes in the Family, Beneficiaries, or Executors:*** A new baby, a child becomes 18 (or perhaps some significant older age), serious illness or death of a family member, beneficiary, or executor.
- ***Marriage:*** As stated above marriage automatically nullifies a previous will. A new will should be prepared upon marrying.
- ***Divorce:*** A divorce does not invalidate a previous will. But in many states, a former spouse isn't allowed to receive anything from the estate even in they are named. Some don't allow them to be an executor unless it is clearly stated that in the case of divorce they should still be the executor or still receive benefits.
- ***Separation:*** Does not have any effect on a will, so it is best to review and update the will shortly after the spouses separate.
- ***Changes in Financial Circumstances:*** A person's will should be updated if they acquire assets which they would like to leave to certain people. It should be updated if the value or size of their assets becomes too small to provide the amounts of money or property listed in their will.
- ***Changes in Taxes:*** Changes in the tax rates, new taxes or reliefs may prompt a review of someone's will if their estate is large enough to be taxed.
- ***Going to Live Abroad, or Even to a Different State:*** If a person is planning to live in another country a will should be made in that country in order to make it simpler to manage the estate. Even moving to a different state can affect your will.

After a last will and testament is completed, the original must be safely stored. It can be in a file or fireproof lockbox at home, where it can be found by a trusted person. Some people keep their will in a safe deposit box, but remember that someone has to be able to get into the box after a person passes away. Some

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

people solve this problem by having a trusted person listed with them to have access to the safe deposit box.

When a will is reviewed, remember the other accounts and policies where one person gets money when another one dies, no matter what the will says. It's important to look at anything where a person names a beneficiary, such as:

- Life insurance policies
- Retirement accounts such as IRAs and 401(k)s
- Bank accounts that pay when a person dies
- Brokerage accounts that transfer on a person's death

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for American Indian and Alaska Native Communities

Activity

It is recommended that you review and update your will each year, so that it is accurate and up to date. To help you get started, complete the checklist below of what you will need to prepare a will. Check the items that you know or have and those you need to research or find.

Preparing to Write a Will	On Hand	Needed
Full names, addresses and birth dates of your spouse, children and all other beneficiaries.		
Full names, addresses and phone numbers of potential representatives/executors.		
Full name, address and phone number of who you want to have guardianship of your children.		
Location, account numbers, legal signatory, and balances for all bank accounts and financial assets.		
List of retirement accounts including beneficiaries' names and current balances.		
List of insurance policies including company, policy number, and beneficiary.		
Estimated value of items you own like house, real estate, cars, antiques, jewelry, etc.		
List of debts including amount and whom you owe.		
Copies of wills, trusts, divorce settlements, and other important legal agreements or documents.		
A list of special end of life requests including special customs or ceremonies that you would like followed.		

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Story of Hope



"My wishes were my stuff that belongs to me how I divided them into three with my three kids and the other thing that was really helpful was thinking about my grandkids and I have a life insurance that I gave onto my grandkids if anything happens. I wrote all this up all my wishes and the house and if something happens to me. So, I did all this because I'm really scared what may happen to me. You know, I've accepted it, if I'm going to go, I'm ready to go. Got all my outfits, what they need to dress me in, got my moccasins made and my shawl, and my crystals that I can take with me. So I prepared, but I'm still scared." -- Mary Lovato, Santo Domingo Pueblo, Bone and Adult Leukemia Cancer Survivor

(Clark, R., (Producer) & Lovato, M. (Artist). (2007). *Survivor Video Vignettes: Final Will*. [Web]. Retrieved from http://www.natamcancer.org/vignettes/maryl_2.html)

Key Messages

- A person should have a will to protect their loved ones and family. This lets a person say who they want to take care of their children and how they want belongings distributed.
- It is important that a person review their will regularly and update it when needed, especially if their marital or financial status changes.
- Make sure that all legal documents are complete, including a will and an advance directive. Be sure that loved ones know about the advance directive and where to get copies quickly. For a last will and testament, the original must be safely stored where a trusted person can get it.