

**Please Don't:**

Do **not** write on your original will to make changes. Do **not** remove pages and insert new pages into your will to amend it. It may invalidate the will.

**Ask Your Attorney:**

Bring in a copy of your old will and any codicils

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Bring copies of real estate deeds to see how things are titled

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Do you have a tax problem? Maybe not, but have handy a summary of the value of your estate.

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Bring copies of insurance policies to help verify your estate value.

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There are many other issues: soundness of mind, free from undue influence, etc.

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How much is a will or estate planning? Call and ask.

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Expect a flat fee for each type of work done. It is unusual for an attorney to charge a fee based on a percentage of the value of an estate.



This information brochure is not intended to be used as legal advice. Please consult with your attorney.

# LAYMAN'S CHECKLIST

## FOR A WILL:

*Things to think about when you consult with your attorney*

*Presented as a public service by:*

**Debbie Wade, Judge**

**Troup County Probate Court  
100 Ridley Avenue  
LaGrange, Georgia 30240**

**Main office number: 706-883-1690  
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See information about this Court and standard Court forms at:

[www.gaprobate.gov](http://www.gaprobate.gov)

## **LAYMAN'S CHECKLIST FOR A WILL:**

### ***Things to think about when you consult with your attorney***

#### **Friendly Hints:**

Do get professional help. Don't do your own will. It may look simple but if certain things are omitted or done incorrectly, there may be problems. An attorney who handles wills as a regular part of his or her law practice will do the best job for you.

Do become educated about wills and probate court. Georgia is "probate friendly." There is no inheritance tax in Georgia. Probate is inexpensive, doesn't take long, and does not normally require an attorney for filing, and does not normally require an inventory of assets, appraisals, or annual returns. Forms are free.

Don't be frightened by scare tactics by businesses who want to sell you a product, such as the so called "**living trust.**" Tax attorneys will assure you that a trust within the will (testamentary trust) can usually accomplish the same tax savings at less cost. Trusts are valuable where you take income from investments but have conveyed the principal to a charity. Trusts are used to care for someone like an adult child who is disabled (support trust) or to pre-dispose of property where family dissension is expected.

Most executors/administrators do not take their fees because their work is for the family, and, besides, it would be taxable income. Most people will not have a federal estate tax concern but those who do usually address taxes for less cost through their wills than by setting up living trusts.

If you want a living trust and will include real estate, ask your attorney what effect it might

have on homeowner tax exemptions and reduce tax conservation status.

Contrary to what you see advertised, a living trust is not foolproof. Attorneys will inform you that trusts can be attacked and same aside for the same reasons a will can be set aside.

The Department of Family & Children Services can tell you that you can **not** "spend down" your assets in a living trust in order to qualify for Medicaid in a nursing home. In fact, it is a Federal crime for professionals to advise you to transfer funds to an annuity or other instrument to become eligible for Medicaid.

Don't fall for the gimmicks. Talk with an attorney who specializes in tax and estate law to see if you really need a living trust.

#### **A Few Things Your Will Should Comply With:**

- Put it in writing.
- State it is your will.
- State whether prior wills and codicils are revoked.
- Name your legal heirs or say you have none. (An attorney can make sure you have included the right persons.)
- State that you want your estate to pay for your funeral and burial expenses; describe them.
- Name who is to be the representative of your estate. (personal representative)
- Name back up representatives.
- State if your representative and back up representative are free from bond, appraisals, inventories, returns.
- Name who is to be the guardian of your minor children if you and your spouse both die.

- Name back up guardians.
- Name a testamentary conservator or trustee for your minor children.
- Name back up testamentary conservators or trustees.
- Set out the compensation and powers of your representative, children's guardian and testamentary conservator or trustee.
- State to whom you give your property; provide for a residuary clause.
- Clarify ownership of accounts with more than one name on them.
- If you divide your property among heirs, have you considered the effect of an outstanding mortgage on the person who receives that particular piece?
- If your estate is to pay all your "just debts", do you want mortgages excepted?
- Is there a possible federal tax liability? Ask your attorney about testamentary trusts and gifts to legal charities.
- Ask your attorney if you need an "in terrorem" clause if you are concerned someone will contest the will.
- Sign in front of two witnesses at your attorney's office. If the witnesses are needed, the attorney is best able to find them.

#### **Extras That Make Things Easier:**

You and the witnesses can sign a self-proving certificate in front of a notary to save the witnesses from having to come in if the will is uncontested.

Ask the attorney about a codicil (amendment) to make changes in a will, to save having to redo the will.