

Legal Tools and Options for End-of-Life Planning

Gregory B. Bodwell

All about me: Disclosures and disclaimers

Gregory B. Bodwell

- Serving Summit in Montana since 2005, attorney since 2014
- Glimpsed what works well and not so well in end-of-life giving
- Licensed in MT, not expert, not legal advice, for info purposes only
- Studied teachings for over 30 years, lay brother
- Grew up in Ohio, summered by a lake in Wisconsin
- Ph.D. in history from Case Western Reserve University
- *Life Insurance Simplified* with B. Richard Bodwell available on Amazon

Where there's a Will, there's a way to:

- Provide for distribution of your property upon passing (your way)
- Balance karma.
- Express appreciation and love.
- Set boundaries.
- Prevent conflict.

A Will is NOT:

- 100% guarantee that your wishes will be followed exactly. Examples:
 - Allowance for exercise of discretion by Personal Representative/Executor.
 - Automatic spousal and child shares override.
 - Settlements and court orders.
- Necessarily the best place to put instructions for funeral and remains.
- A means to control others indefinitely after your death.
- The only (or necessarily best) way to distribute property at death.
- The same as, or interchangeable with, a trust.
- Exclusive (can, and often should, employ several modes together).
- Set in stone (until you are).

<https://www.nolo.com/legal-encyclopedia/what-will-wont-do-29767.html>

Confusion with Powers of Attorney

- A Power of Attorney is your grant of authority to someone else.
- A **Durable** Power of Attorney continues even after you lose capacity.
- But Durable does NOT mean it continues after your death.
- PoAs typically grant authority to make financial or health choices.
- Five Wishes is a spiritual form to help with health choices and PoA.
 - Will be the subject of a workshop next week with David Brewer.
- PoA grants NO authority over your estate after you pass.
- Only the Personal Representative/Executor named in your will can do.

Why all the formality?

- Just because we've always done it that way (for centuries)?
- Extra steps help ensure Will is genuine and represents your intent.
- Wills frequently challenged or subject to dispute (and hard feelings).
- Special steps required by state law; Will invalid if not followed.
- Minnesota: Will must be signed in front of two witnesses to be valid.
- Witnesses sign also.
- Witnesses should not be named in Will, family, nor under 18.
- Witnesses must be of sound mind and signing voluntarily.
- Unlike Montana, Minnesota has no exception for "harmless error."

Will types and best practices

- Self-proving Will: Affidavits of all signers, makes harder to challenge.
- Notarization can make self-proving (though not otherwise required).
 - Summit doesn't notarize Wills for members because of conflict of interest.
- Holographic Will allowed in Montana but NOT in Minnesota:
 - "Emergency" Will not witnessed, in own handwriting (don't try).
- Don't feel you need to give everything to Summit.
 - Find the balance of giving also to friends, family and other nonprofits that feels right to you.
- Will kits available that include key elements (better than nothing).
- "Magic language" can be important.
- Can store Will anywhere, but leave a breadcrumb trail.
 - Personal Representative/Executor should have a copy.
 - We store copies of members' Wills upon request.
- Probate court or administrator's office can store for free or small fee.

What happens if you don't have a will?

- Means you die “intestate” (without a will).
- State intestacy laws determine who gets what.
- To family members in order of precedence set by state statute.
- Spouse favored, then kids, and so on.
- If no relatives, can “escheat,” or go to the state (nothing to Summit).

Choosing a Personal Representative (PR)

- PR is modern term for what used to be called “Executor.”
- Can name more than 1 (in order of your preference).
- But 1 (at a time) may be better than naming co-PRs.
- PR can step aside; court can appoint a PR in some circumstances.
- Please don't name TSL, Church or staff as your PR.
 - Unless close personal friend and recognizes required commitment.
- PR entitled to take an hourly fee from estate proceeds for work.
- Can name a law firm or bank as PR, may charge an annual fee.
- Ideal: Younger friend or family you trust (want to fulfill your wishes).

Will alternatives

- Trusts (revocable and irrevocable)
 - Place property in trust, managed by a trustee for beneficiaries
- Life estates (poor man's trust) (for real property)
- Joint tenancy with rights of survivorship (for real property)
- Beneficiary deeds/transfer on death (TOD) deeds (for real property)
- Payable on death (POD) accounts (cash/bank accounts)
- Life insurance, annuities, retirement accounts
- Above are transfers outside of Will:
 - Seek to avoid probate, among other benefits
 - Probate is time-consuming, costly, and public.
 - May still be counted for proportional liability for estate expenses
- Having a Will as catch-all is often a good idea even when have other instruments.
- Consider leaving enough liquid cash in estate to handle estate expenses.

Fine points

- Medicaid Asset Protection Trusts
 - Too late if wait till need a nursing home
 - Charitable Remainder Trusts
 - Tax consequences and various pros and cons to self and heirs/beneficiaries
 - Mantra: *Consult a licensed professional (3x)
 - Attorney, financial planner, specialist in elder care, law or finance
 - *Well worth the cost for peace of mind.* Free help may also be available.
- <https://www.lawhelpmn.org/self-help-library/planning-ahead-elder-law/wills-and-probate>
- <https://www.ag.state.mn.us/consumer/handbooks/probate/CH1.asp>