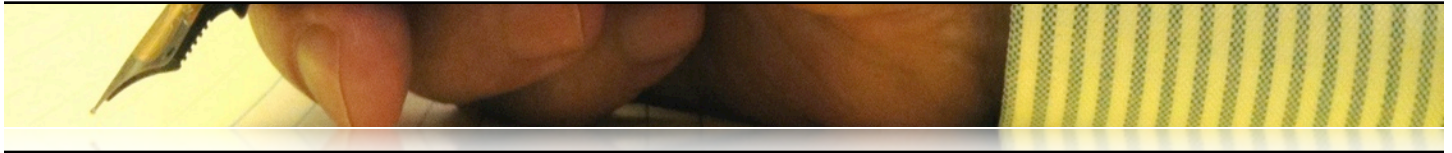


FAQ: Wills & Wishes

Teaching workshops about middle-class milestones, I answer a lot of questions for people. This is one of them.



Question: Does the Will take the place of the family tree or Heirship Affidavit?

Answer: Yes. The Will overrides the family tree.

The default method to distribute an estate under Texas law is inheritance according to the family tree. When you write a will, you can choose to distribute your estate to anyone you wish. Whether through inheritance or by will, distributing an estate of any substance requires the approval of a probate court.

Heirship is the standard path for distributing an estate. Texas law defines the order of heirs. Depending on the family history of the deceased person, the person's heirs begin with spouse, children, and descendants; then ascend to the parents; then descend through siblings, nieces and nephews, and down the family tree. The family tree can be complicated in complex families with multiple marriages and stepchildren.

Writing a will tells the world that you do not want to have your estate distributed according to a set of standard rules. You've thought about it. You've declared your wishes. And you've appointed an executor to carry out your wishes.

The probate court will rule on an estate, whether it is distributed by heirship or by will. In an heirship proceeding, the court has a big job. It must determine who the heirs are, and carefully supervise the person who administers the estate. In probating a will, the court has an easier job. It must simply confirm that the will is authentic, and confirm that the person appointed by the will as executor is able to serve. Because the person who wrote the will made his wishes known and endorsed the executor, the court can turn the executor loose to do his job according to his conscience.

Source: Texas Estates Code §§ 32.001, 201.001-201.003, 202, 251.002, 256.

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