

The Law Office of

Robin Theobald Cravey



presents

Wills & Wishes

a workshop

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- ❖ This slideshow is a workshop presentation on estate planning and does not give legal advice.
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- ❖ www.craveylaw.com, 512-236-9655



Introducing the Will

Varieties of the Last Will

Texas law recognizes

- ❖ A handwritten Will
- ❖ A Will signed with witnesses
- ❖ A witnessed Will with affidavit attached
- ❖ A Codicil



Oral wills are no longer recognized.

Requirements of a Will

Every will must be written with:

❖ Intent

❖ Capacity

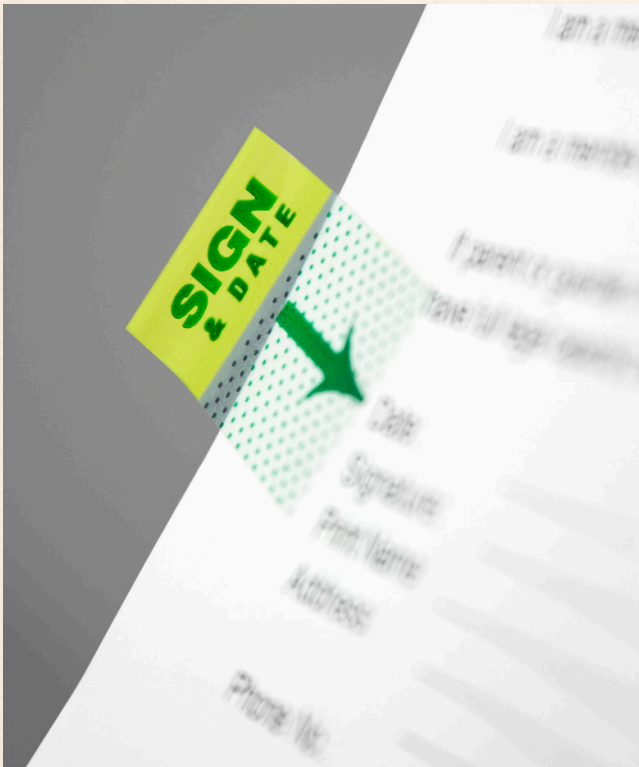


A Handwritten Will



- ❖ **A handwritten will is valid in Texas**
- ❖ A handwritten will is called *holographic*
- ❖ *All* of it must be in the testator's handwriting
- ❖ **A handwritten will is useful in case:**
 - ❖ You are taking an unexpected trip
 - ❖ You suffer a sudden life-threatening injury

An Attested Will



- ❖ If the will is not *holographic*, it must be *attested*— signed by two witnesses who:
 - ❖ are both at least 14 and are disinterested.
- ❖ The witnesses sign a statement that:
 - ❖ The Testator is at least 18,
 - ❖ is of sound mind and memory,
 - ❖ and is under no constraint

A Self-proved Will

- ❖ **An attested will can also be *self-proved*.**

- ❖ This allows the will to be proved in court without calling witnesses to testify.

- ❖ **An affidavit is attached to the will**

- ❖ signed by the Testator and the witnesses

- ❖ swearing that the will was properly executed.



A Codicil

A codicil is an amendment to your last Will.

It republishes your Will.

It can be holographic, attested, or self-proved.





Meet the Players

Characters in a Will



- ❖ The Testator (Our Narrator)
- ❖ The Witnesses (Disinterested Friends)
- ❖ The Fiduciaries (Executor, Trustee, & Guardian)
- ❖ The Beneficiaries (Objects of the bounty)

The Testator



- ❖ The *Testator* is the author of the Will, as in *Last Will & Testament*
- ❖ If it's your Will, you are the Testator.
- ❖ The Testator narrates the action, saying:
- ❖ which characters will play which roles, and
- ❖ which gifts will go to which beneficiaries.

The Witnesses

- ❖ They will come with you to the Will signing ceremony in the Lawyer's office.
- ❖ They are good long-time friends of the family.
- ❖ They are disinterested, having no other role in your estate than to attest to your sound mind.
- ❖ In rare cases, one of them will be called to testify at the hearing on your Will in Probate Court.

The Fiduciaries

- ❖ These are your protagonists. They will carry out your instructions after you're gone.
- ❖ The Executor will collect your assets, pay your debts, and give your gifts to your beneficiaries.
- ❖ The Trustee will manage assets given to a beneficiary who is under-aged or disabled.
- ❖ The Guardian will raise your minor children.

Question

- ❖ **What is a fiduciary?**

- ❖ One who must exercise a high standard of care in managing another's money or property
- ❖ One who owes to another the duties of good faith, trust, confidence, and candor



The Beneficiaries

- ❖ Members of your family are the natural objects of your bounty.
- ❖ Close friends are often remembered in the Will.
- ❖ Gifts to charities can perpetuate your civic spirit.
- ❖ Contingent beneficiaries receive your estate when none of your named beneficiaries can take.



Major Themes

Major Themes in the Will

- ❖ Personal & household goods
- ❖ Specific bequests to particular beneficiaries
- ❖ Residuary estate
- ❖ Community property
- ❖ Separate property
- ❖ Contractual assets



Personal & Household Goods

- ❖ This includes everything from your pocket knife to your furniture or car.
- ❖ These are often given as a lot to the surviving spouse and children to divide as they wish.
- ❖ Sometimes, you will give specific personal treasures to individuals by writing a letter to your executor.

Specific Bequests

- ❖ These are gifts of specific assets to specific beneficiaries, but
- ❖ They are too valuable to be given in the letter to the executor.
- ❖ It could be a gift of \$1,000 to a friend.
- ❖ Or the gift of the family farm to a brother.

Residuary Estate

- ❖ Your residuary estate is everything left over after personal and household goods & specific bequests.
- ❖ It can include cash, bank accounts, real estate, or any other form of property.



Community Property

Texas is one of a handful of states that recognizes community property in marriage.

- Property owned by married persons is either community property or separate property.
- Community Property consists of everything acquired during marriage that is not separate property.
- Each spouse can give his or her undivided one half.

Separate Property consists of:

- Property owned by a spouse before the marriage;
- Property acquired by one spouse during the marriage by gift, devise, or descent; and
- Property recovered in a lawsuit for personal injuries sustained by one spouse.

Community Property

- ❖ **Does not include property brought into a marriage**

- ❖ Unless it has been “commingled” with community property.

- ❖ **Separate property must be:**

- ❖ Kept separate and accounted for.

- ❖ **Federal benefits disregard community property.**



Contractual Assets

- ❖ **Includes:**
 - ❖ Life insurance policies
 - ❖ Annuities
 - ❖ Retirement accounts
 - ❖ Some bank accounts



Contractual Assets

- ❖ **Are not passed by Will, but by beneficiary designation**
 - ❖ Unless the contractual beneficiary dies or is disqualified
- ❖ **Spouse named as beneficiary is disqualified upon divorce**
 - ❖ Benefits are sometimes paid out erroneously
- ❖ **Can be made payable to “the trustee named in my Will”**





The Plot Thickens

The Plot Thickens

- ❖ Kinship & complex families
- ❖ Divisions in the family
- ❖ Passing down generations



Kinship & Complex Families

- ❖ Complex families make the most problems in heirship proceedings
- ❖ In a complex family, husband and wife are in their second or third marriage.
- ❖ They have his kids, her kids, and their kids together.
- ❖ This complicates family ties and estate planning.

Kinship & Complex Families



- ❖ **Reduce the confusion:**
- ❖ Keep your divorce decrees to prove how property was divided
- ❖ Make a family tree to help trace out connections
- ❖ File an Affidavit of Heirship
- ❖ Write a Will to avoid complex distributions!

Family Divisions

- ❖ Writing a Will can be painful when the family is divided.
- ❖ Deciding how to treat an estranged loved one is hard.
- ❖ The key is to think through the scenarios and plan for each one.

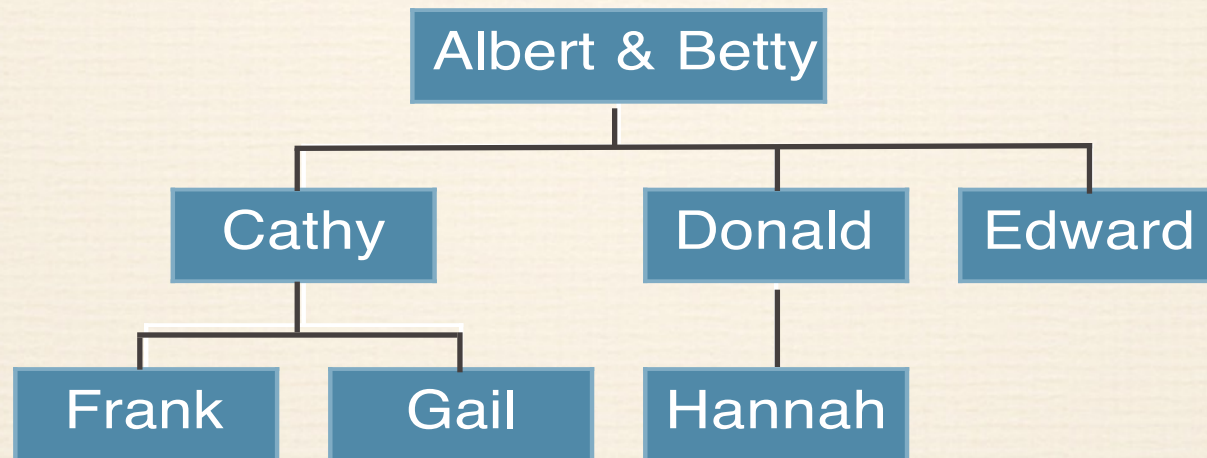


Kinship & Complex Families

❖ Passing down the generations

- ❖ When one generation predeceases
- ❖ Can be done per Stirpes or per capita

The Stirpes Family





Form & Structure

Parts of the Will

- ❖ Declaration: this is my Will.
- ❖ Gifts to Beneficiaries
- ❖ Appointment of Fiduciaries
- ❖ Powers & instructions
- ❖ Testamentary Trusts
- ❖ Definitions & Signatures



The Declaration

- ❖ This is my Last Will (and revoke any previous).
- ❖ Identify yourself. Give your marital history.
- ❖ Outline your family tree.
- ❖ Outline your spouse's marital history.
- ❖ Identify any non-family beneficiaries or fiduciaries.

Gifts

- ❖ Personal and household goods are generally given all together, except those covered in the letter to the executor.
- ❖ Specific gifts must be carefully defined.
- ❖ Dispose of the entire estate, and provide for contingencies.



Appointment of the Fiduciaries

- ❖ Acting as a fiduciary is a big responsibility and tough job.
- ❖ Ask each person if he is willing to serve. Often family members do this.
- ❖ Appoint at least one alternate for each fiduciary.
- ❖ Direct whether fiduciaries should be compensated.



Powers & Duties



- ❖ Texas probate & trust law sets out powers & duties of executors, trustees, and guardians.
- ❖ The Testator can override the law in some areas.
- ❖ The Testator can also give directions to the Executor, Trustee, and Guardian about how to carry out their duties.

Testamentary Trusts



- ❖ **To care for your minor children**

- ❖ Someone must manage the money inherited by the children.

- ❖ **To care for any other minor children**

- ❖ If an adult beneficiary predeceases you, leaving minor children, the minors need a trust.

- ❖ **To care for a “spendthrift” beneficiary**

- ❖ **To care for a disabled beneficiary**

- ❖ If an adult beneficiary is disabled, a trust can take care of his or her inheritance.

- ❖ **To avoid estate tax**

- ❖ Very few estates are taxable, so probably not a worry.

Definitions & Signatures

- ❖ Definitions of terms used in the Will fall here.
- ❖ Contingent beneficiaries can be defined as a class of people, a charity, or a specific group.
- ❖ The testator's signature is followed by an attestation clause and the witnesses' signatures.
- ❖ Last is the self-proving affidavit, recently revised in the law, and the seal of the notary public.



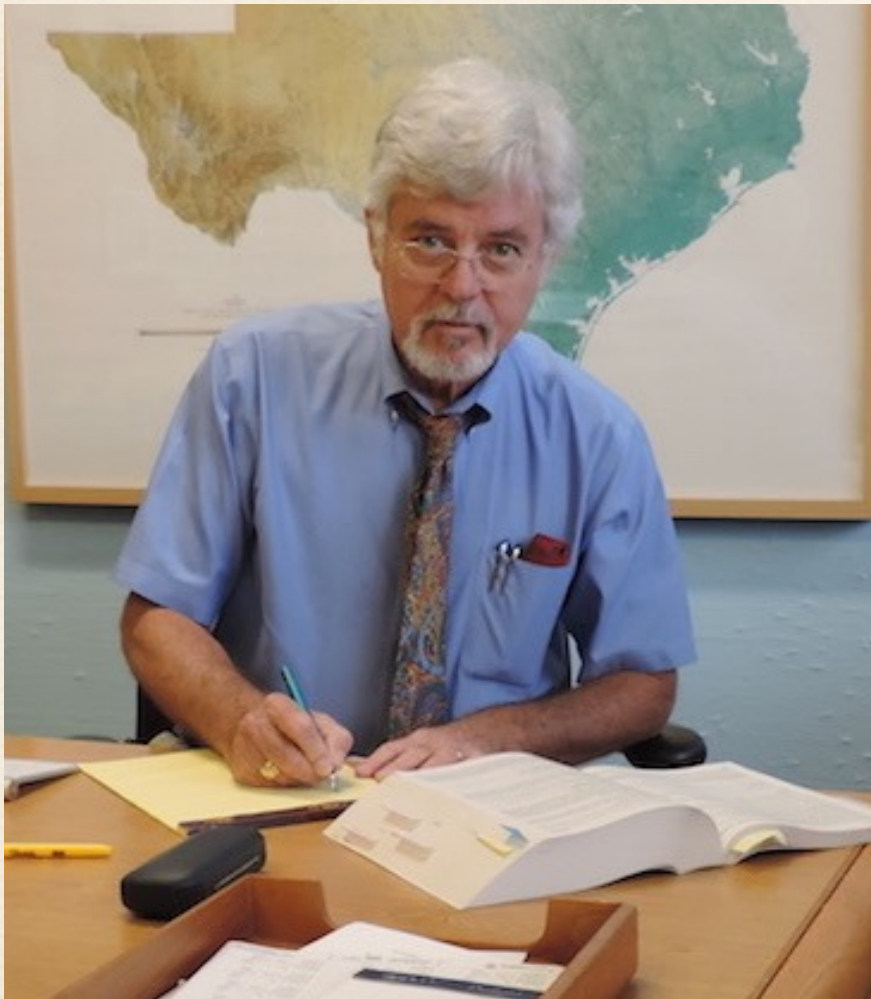
Editor's Manuscript

Editor's Manuscript

- ❖ Your lawyer is your editor
- ❖ Drafting your will
- ❖ Signing ceremony
- ❖ Additional estate planning documents



Your Lawyer is Your Editor



- ❖ The Lawyer's job is to think of the things that might happen
- ❖ He will also make sure that the Will is worded properly and executed properly.
- ❖ The cost of a lawyer's service in drafting a will depends on the lawyer and the time required to draft the Will.

Drafting your Will



- ❖ The process begins with a questionnaire from the lawyer's office.
- ❖ At home, you'll gather information for the lawyer to use in drafting.
- ❖ Talk things over with family members, important friends, and your fiduciaries.

Drafting Your Will



- ❖ Take the information you have gathered, and your questions, to a consultation with the lawyer.
- ❖ The lawyer will draft the Will and send a copy for your approval.
- ❖ You may want to go in for another consultation.

Signing Ceremony

- ❖ In the lawyer's office, you and your witnesses will sit down to sign the documents.
- ❖ The notary public will swear in all the signers.
- ❖ The lawyer and the notary will see that each document is properly executed.
- ❖ *Take your witnesses to lunch.*



More Estate Planning Documents

- ❖ Durable Power of Attorney
- ❖ Medical Power of Attorney
- ❖ Directive to Physicians
- ❖ Advance Declaration of Guardian
- ❖ Appointment of Agent for Disposition of Remains





Action: Probate Process

Probate Process

- ❖ Your lawyer is your director
- ❖ Establishing estate administration
- ❖ Settling the estate
- ❖ Intestate distribution



Lawyer: Director & Producer

- ❖ The action begins in the lawyer's office.
- ❖ After the funeral, the executor takes the will to the lawyer and retains the lawyer.
- ❖ Throughout the probate process, the lawyer will:
 - ❖ represent the executor in court, and
 - ❖ advise the executor on the settling of the estate.

Establishing Administration

❖ If there is a will

- ❖ Executor submits application with will
- ❖ Court holds hearing with executor.
- ❖ Judge orders Letters Testamentary



❖ If there is no will

- ❖ Someone submits application with proof of heirs
- ❖ Court appoints attorney ad litem
- ❖ Court holds hearing with “disinterested” witnesses
- ❖ Judge orders Letters of Administration with Bond

Estate Administration

- ❖ **The Executor or the Administrator**
 - ❖ publishes notice of appointment in the newspaper
 - ❖ collects estate assets
 - ❖ submits an estate inventory to the court
 - ❖ pays the estate debts



Estate Administration

❖ **Executor
distributes property**

❖ according to Will, or

❖ **Administrator
distributes property**

❖ according to state law



Intestate Distribution

❖ If no surviving spouse

- ❖ Children and descendants take, or
- ❖ Parents take, or
- ❖ Parent and siblings take.

❖ If spouse survives

- ❖ Spouse shares separate property with children or with parents and/or siblings
- ❖ Spouse takes all community property or shares community property with children by another marriage



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Thank you for attending *Wills and Wishes*

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