

# An Artist's Guide to Wills and Estates

Philadelphia Volunteer Lawyers for the Arts  
A program of the Arts & Business Council of Greater Philadelphia



200 S. Broad Street, Suite 700  
Philadelphia, PA 19102

Phone: 215.790.3836, ext. 1  
Fax: 215.790.3888

PVLALegal@artsandbusinessphila.org  
www.artsandbusinessphila.org/pvla

## An Artist's Guide to Wills and Estates in Pennsylvania

The law governing wills and estates varies from state to state, so always keep that in mind when you conduct your planning. This guide is primarily intended to help you navigate the process as it applies to the laws of Pennsylvania.

### What is a will?

Everyone has an estate, which is all the personal property and real estate a person owns. A will is the traditional method of distributing property after death. *Everyone* should have a will, regardless of health status or age. This is particularly true for artists, because regardless of your current financial status, you do have property that needs to be cared for: your art.

A will names the person responsible for administering your estate, called an executor. The administrative tasks include locating the heirs, settling all the deceased party's financial obligations (bills, taxes, and notifying creditors of the death), obtaining death certificates for everyone who needs a copy, and dealing with any other unsettled issues until everything is resolved. The will also names one or more beneficiaries who will receive your property after death. Your executor should ideally be knowledgeable about your artistic discipline if he or she will need to make informed decisions about your work.

Remember that it is also possible to name advisors to guide your executor or beneficiary in making decisions involving your art. Even though you trust someone enough to be your executor, they may not have the expertise to care for your art or to manage the documentation and records of your career.

Should you fail to make a will prior to your death — called dying "intestate" — then your next of kin will have legal rights to your estate and its assets. Typically, this means if you have a spouse and children, the estate is divided between them. If only children survive, it is divided amongst them. If you have no spouse, children, or grandchildren, the distribution occurs amongst your parents, siblings, grandparents, aunts, uncles

or cousins. The court will appoint an administrator, and if you have a child, the court will appoint a guardian for the child's estate. This means that if you have a spouse and one child at the time of your death, the spouse and the child divide your estate, and the court would appoint someone to manage the child's half of the estate. Also, if you have a child but no surviving spouse, the court will appoint a guardian for the child.

It is important for same-sex couples to be aware that unmarried partners are not legally recognized universally as having a right to each others' assets. In New Jersey, a domestic partner who dies intestate is now able to inherit property and administer the decedent's estate, but in Delaware and Pennsylvania, that right does not currently exist. Therefore, for same-sex couples it is particularly important that you employ a lawyer to make a will to ensure that your partner inherits your estate according to your wishes.

For your will to be valid, you must be healthy enough to know the contents of your estate and to understand the scope and meaning of the provisions of your will at the time you sign it. Upon your death, the will must go to probate, which is the process where the local Register of Wills determines that the will is valid and qualifies an executor. For those who die intestate (without a will), a would-be executor must file forms with the Register of Wills in order to obtain letters of administration. The Register of Wills is typically at a courthouse, but not always, and there is typically a fee (which varies by county). A list is available online at <http://evans-legal.com/dan/regwills.html>.

### **Begin planning early, and seek advice and consultation.**

Start planning and make decisions while you are in good health. Effective planning for the administration and preservation of your work will take some time, and you should not be rushed when making decisions.

## *An Artist's Guide to Wills and Estates*

---

Involve either a private lawyer or the legal department of an arts-related service organization in your planning process. Mistakes can be avoided by employing a lawyer. This area of the law has an added level of complexity since estate and property laws vary from state to state.

### *What if someone contests my will?*

A person contesting your will may claim that someone unfairly influenced you while planning your will, or that the proper procedures were not used to execute the will, or that the will is a forgery, or that some element of fraud is involved. Anyone contesting the will may do so for up to one year from probate. There are some actions that you can take to avoid such problems:

- An “open” transaction when forming a will is less suspicious than a will created in secret.
- Consider making a videotape of the signing of your will to demonstrate you were aware of your actions. If you are in very poor physical condition, however, this could also be used against you.
- Ask your lawyer about using an in terrorem clause. This means that if you give something to a family member in your will and they contest the will unsuccessfully, they lose the original inheritance (“the bequest”) as well. In Pennsylvania, courts interpret these clauses strictly (adhering closely to the language of the will) because the result — disinheritance — is so harsh. Additionally, Pennsylvania changed the law in 1994 to state that these clauses are unenforceable when probable cause exists for the party to contest the will in the first place. This is so beneficiaries genuinely believing that the will is not valid are not forced to stay silent in order to avoid risking their inheritance.

### *Whom do I talk to about my will, and why?*

Discuss your wishes and your situation frankly with family members (and others who would have a right to inherit if you were to die without a will) to avoid unnecessary will contests. Let them know your wishes.

Include your doctor or other health care professionals in discussions and the signing of your will. Ask your doctor’s advice about temporarily not taking any medications which could potentially impair your cognitive abilities prior to signing your will. If possible, you should also obtain a letter from your doctor stating your competence when you signed the will.

Make sure that the beneficiaries of the will are not present when the estate is planned with the attorney or when the will is signed, because many states have rules that either make the will invalid or automatically disinherit the beneficiary who witnesses the signing.

### *What about a trust?*

Another way of dealing with the disposition of your art and other property after death is through a “revocable living trust” (also called a Revocable Inter Vivos Trust). This is a trust created during your lifetime to which you transfer all of your assets while you are still alive. During your lifetime, you may be the sole, or the main, beneficiary; alternately, you may be the sole trustee. However, *you may not be both* the sole trustee *and* the sole beneficiary of the trust — the involvement of a second trustee or a second beneficiary is crucial. After your death, your assets would pass to the persons or organizations you have designated in the trust. In most states, the advantage of this plan is that you avoid probate, which can be expensive and/or take a lot of time, but in both Pennsylvania and New Jersey, probate tends to be inexpensive and relatively quick. There are tax implications for both trusts and revocable living wills. Therefore, you should talk with a lawyer to explain the benefits and disadvantages.

### *Other Options: Joint Interests*

Not all of your property needs to be distributed through your will or a revocable trust. For example, joint bank accounts and jointly held leases or real estate often automatically go to the co-owner. Life insurance, pension and death benefits are paid directly to the named beneficiary.

### *You should always inventory your work.*

A complete inventory of your work can be helpful when making your will or trust. If your work is clearly listed, along with the names and addresses of those to receive the work, it is more likely that your wishes will be carried out accurately. Avoid vague bequests (“I give all of my large paintings to X”), since they will complicate the process.

### *How about giving away my work?*

You might also consider making direct gifts of your work before death. The locations of these gifts should be included in your inventory of work. The potential drawbacks of this approach are that you no longer have access to or ownership of your work. Also, if your health improves, you may not be able to regain the work. You should consult a lawyer or accountant with respect to the tax consequences of making lifetime gifts of your works.

You may also want to give your work to a charitable institution, such as a museum, library, school or church after your death. First, however, you should contact the institution to discuss the terms under which your gift will be accepted. You should also make alternate plans in case the charity later rejects the bequest. Clearly identify which works you wish to go to the charity.

## *An Artist's Guide to Wills and Estates*

### *When gifting your work, there may be copyright considerations.*

When you are giving your work to another person or an institution, you must also consider the copyright. The copyright law provides protection to "original works of authorship, including literary, dramatic, musical, artistic and other intellectual works, whether published or unpublished," provided the work is "fixed in a tangible medium of expression." For example, an original manuscript, song, or painting possesses copyright while an improvised dance that was never recorded in any way would not. The copyright is a separate entity from the work itself and, unless it is clearly transferred in writing, you as the author generally own it, even if you sell or give away the work itself. The copyright owner has the right to reproduce the work, make derivative works, distribute copies of the work and perform the work publicly. For works created after January 1, 1978, the term of the copyright is the life of the artist plus 70 years.

Your will should clearly dispose of your copyrights. Consider whether you want the copyright in your work to be bequeathed to the people or institutions to which you give your work, or elsewhere. Not defining who is to own the copyright to your work can cause both tax and legal problems for your heirs; copyrights pass differently upon the copyright holder's death than do other parts of an artist's estate, as controlled by copyright law, not estate law.

### *What about the taxes involved in transferring my work?*

Tax laws are complicated and vary from state to state. For the most part, estate taxes will be a major planning consideration for commercially successful artists. Generally, your estate will be subject to Federal estate taxes if the net value of the estate exceeds \$2,000,000. In addition, depending on where you live, your estate may be subject to state taxes.

### *You can change your will.*

Remember that you can always change your will or make amendments to it with the help of your attorney. This is of special importance to artists who continue to make new work after their initial will is drawn.

### *Other concerns for effective estate planning.*

Effective estate planning involves more than making a will or a trust. Since each person's legal needs are specific to his or her circumstances, artists planning their estates should consider executing the following documents and dealing with the following issues:

- **Durable Power of Attorney.** This enables another person to make financial and business decisions on your behalf during your lifetime if you become debilitated.
- **Living Will.** This document states your wishes concerning health care treatment, particularly artificial life support.
- **Health Care Proxy.** This enables another person legally to make health care decisions on your behalf, if you are unable to do so.
- **Additional considerations.** Make arrangements for the guardianship of minor children; for funeral instructions; and for any entitlements such as Social Security, Medicare, and Medicaid.

Effective planning is the key to making sure your wishes, and your art, are taken care of upon your death. For more information regarding this issue, or any other arts-related legal issue, contact:

#### **Philadelphia Volunteer Lawyers for the Arts**

200 S. Broad Street, Suite 700

Philadelphia, PA 19102

Phone: 215-790-3836, ext. 1

Fax: 215-790-3888

Web: [www.artsandbusinessphila.org/pvla](http://www.artsandbusinessphila.org/pvla)

[PVLALegal@artsandbusinessphila.org](mailto:PVLALegal@artsandbusinessphila.org)

#### *Other titles in this series:*

- Fair Use Guide
- An Artist's Guide to Wills and Estates
- Finding a Live/Work Space for Artists
- Censorship, Obscenity, and Indecency
- Guide to Licensing Stock Photography
- Documentaries — A Sample Release Form
- Intellectual Property — An Artist's Primer
- Transformative Works and Copyright for Visual Artists
- Music Licensing
- Nonprofit Incorporation
- Music Performing Rights Organizations
- Music Publishing — A Sample Contract between Composer and Publisher
- The Right to Publicity
- Parody and Satire
- A User-Friendly Guide to Copyright
- Financing your Film Project
- "The Naked Cowboy v. M&M" — An Explanation of Trademark Infringement
- The Visual Artists Rights Act of 1990
- Privacy and Photography
- Invasion of Privacy