WHY MAKE A WILL?

Of all legal instruments the will is undoubtedly the most familiar to the general public. It is also one of the most important documents a man ever signs. I have heard it aptly referred to as a blueprint for the future welfare of one's family. Today I will make some very general remarks about wills, and I will attempt to impress upon you the utility of a will and the desirability of having one drawn by a competent attorney.

A will is an instrument declaring a person's instructions as to matters to be attended to after his death. It is not operative until the maker's death and he can change or destroy it at any time before his death. For this reason it is often said that a will "speaks as of death." Most of you have heard the expression "the probating of a will." Probating is merely making proof to the proper court, in the manner required by law, that the written instrument is truly the will of a particular deceased person.

By making a will you can provide that the property that you own at your death be distributed in almost any manner you choose, and the expression of your desires as set out in your will will be controlling. I say almost any manner because there are two or three possible exceptions. I'll mention one of these exceptions here without going into any detail. A person, even by a will, cannot cut off the rights of a surviving wife or husband in property owned by the deceased at the time of death. The surviving spouse of the deceased is given the power by law to "renounce" the will. This merely means that by "renouncing" the surviving spouse renders

the will ineffective to the extent that it would prevent her or him from receiving the share that would pass to her or him if there were no will. As to the remainder of the property the will may still be effective.

We have seen that when one has a will prepared for him that, with two or three possible exceptions, he can dispose of the property which he owns at his death in any way he wishes. However, changing circumstances may change one's wishes. For this reason one should not make a will and then forget all about it. He should review it periodically to see if its provisions are still desirable in the light of circumstances as they exist at the time of the review.

Now let us see what happens when a person dies without leaving a valid will. In that case the property owned by the deceased person passes by operation of law, or in other words, as is provided by one of the laws of Illinois which is often referred to as the statute of descent. This statute in effect says who will receive the property. One might look at the statute of descent in this way. One might say that the Illinois General Assembly has made a will for every person in the state who does not leave an individual will of his own. Let us now see why we should have a will drawn even though the legislators have already in effect made one for us.

Perhaps in some few cases the distribution as provided by the statute of descent is the distribution desired by the deceased, but I think that is rarely the case. In any event, before you, as an

individual, decide that you don't need a will you should investigate and ascertain just what the will that the legislature has made for you says.

I won't undertake to try to explain the distribution which is provided for by the statute of descent in all situations. Your attorney will be happy to explain to you what effect the statute would have in your own particular situation. However, let's see what the statute provides where a man dies without a will, leaving a widow and a minor child surviving him. The law says that in that instance one-third of the deceased's property shall pass to the widow and two-thirds shall pass to the child. Since the child is a minor a guardian will have to be appointed by the County Court. The property passing to the minor child can be used only for the child's benefit and the guardian will have to make accountings to the court each year. Unnecessary expense and notoriety will result.

Only a few weeks ago an attorney told me of a friend of his, a very vigorous man, who recently died of a heart attack at the age of thirty-six without leaving a will. This friend left an estate of considerable size which passed by operation of the statute of descent, one-third to his widow and two-thirds to his one and one-half year old daughter. Surely this was not what the deceased would have desired.

Let us look at one more possible fact situation and see what happens when a person dies without a will. Assume that a man, now a grandfather, had had two sons, John and Bill, who had both died. Assume further that John left surviving him one child and that Bill

left surviving him four children. Now upon the death of the grandfather, all his property would pass to his five grandchildren, but John's child would receive one-half of it and Bill's four children would each receive one-eighth. In a situation such as this one I believe that many grandfathers would rather have their property distributed equally among their five grandchildren.

Many persons who die without having made a will have their property distributed in accordance with a law which they have never heard of and probably in most cases distributed in a manner they would not have wished.

When one makes a will he can direct the distribution of his property, and in doing so he can take into consideration the personalities, temperaments and financial well-being of his intended beneficiaries. It is obvious that these considerations cannot enter into a statutory scheme of distribution designed to apply to everyone in the State of Illinois who dies without a will. Often when a person does not make a will his property is distributed under the law of descent to collaterals, persons who are not descendants of the deceased, who may already have considerable money and property of their own.

Another very important reason for making a will is that in the will you may name the bank, trust company, or individual that you wish to act as executor. The executor will be appointed by the court to step into your shoes when you are no longer here and to administer your estate and see that the terms of your will are properly carried out. If you leave no will the court will select and

appoint an administrator to handle your estate and to distribute it in accordance with the provisions of the statute of descent.

There are a great many other advantages to making a will. I'll mention briefly only a few of these. In your will you may provide that certain specific items of property shall be distributed to particular persons. In your will you may give your executor broad powers to act so that expensive court proceedings will not have to be resorted to in the administration of your estate for court authority to do certain necessary acts such as selling property which must be sold. Once you have made a will only you can change it. The provisions of the statute of descent, which will control the devolution of your property at death if you have no will, may be changed at the pleasure of the state legislature.

The terms of your will may create a trust. This very useful device can be utilized to provide for minors without necessitating the expense of having a guardian appointed by the court. It can be used to relieve your beneficiaries of the burden of managing property and investing money. It can be used to protect your beneficiaries against their own possible wastefulness and indiscretions. As my time is limited today I cannot now discuss with you the many, many other advantages of a trust. I would welcome the opportunity to do this at some future date.

As I stated earlier, I regard a will as one of the most important documents a man ever signs. Yet, very many men give but little thought to the making of a will. At least they give very little thought to it when they are in good health and when they have ample

time to consider it. Most men yield to the temptation to procrastinate. They wait until they are not well, perhaps going to the hospital for an operation, or perhaps they wait until they are preparing to leave on a long trip. Then, when they are very busy and in a hurry, they rush to see their attorney about a will.

The time people should think about making a will is when they are cool, collected and in good health, and when they can take the time to sit down and carefully plan just what they want done with their property in case they should no longer be here to manage it themselves. I do want to say, however, that a will made in a hurry, or even a so-called "death bed will" is much better than no will at all.

I have not attempted to discuss the legal requirements of a valid will. Your attorney will see that these requirements are met when he prepares your will and has you sign it, and he will also be happy to explain them to you.

In closing I will repeat three points which I hope I have been able to convey to you today. Firstly, nearly every man should have a will drawn for him by a competent attorney, and this will should be reviewed periodically so that it may be seen whether or not changes in circumstances or laws, including tax laws, have made a revision desirable. Secondly, a person can better plan his will when he is healthy and unhurried than when he is sick or very busy. Thirdly, one should name as executor of his will someone who is reliable and experienced, so that his estate will be administered in the best and most economical way possible.