

This article originally appeared in the Fall 2000 issue of "Charitable Times," the Smith College planned giving newsletter.

## **Do you have a will?**

By Linda J. Sosnowitz

If you do, you are in a small minority of Americans. Most of us die "intestate," meaning that we did not make a VALID written will setting out how our property is to be distributed at death.

### What happens if you don't have a will?

Without a will, the law of the state in which you are domiciled at the time of your death will determine the disposition of your assets. This does not mean that the assets will belong to that state, rather the assets will be distributed to relatives according to the degree of their kinship to you. For example, if you are survived only by first cousins at your death, they will inherit your intestate assets—if there are 10 of them, they each will get 10 percent. You may not even know some of them or may not have seen them for many years, yet they will benefit from the fact that you had no will. The intestate law does not recognize or provide for your friends, unmarried companions or charitable interests.

### Why should you have a will?

A will is like a map—it gives directions and guidance to your survivors. No matter how small or simple your assets may be, a will is the way to distribute them. You can leave specific items of artwork or jewelry to individuals or charities. You can give specific dollar bequests to employees, friends and organizations. You can create a trust for the life of an individual with the remainder then payable to a charity and get an estate tax deduction. You can divide the rest of your assets among relatives, charities and friends. You can also provide for alternate beneficiaries if any of your primary beneficiaries predecease you.

Another important feature of a will is the appointment of an executor—the person who carries out your wishes. It is the executor's job to collect your assets, pay your debts and estate tax and distribute the remaining assets as provided in your will. If you have not designated an executor by making a will the local probate court will appoint one.

If you have minor children, you can use a will to appoint guardians for them. If you are intestate and have no close relatives, the court overseeing them will not have any idea of your preferences for their wellbeing.

### How should you make a will?

For a will to be valid, it must be executed in accordance with certain formalities. Each state has different rules in this respect and it is crucial to comply with them. If you do not know of a lawyer in your area who specializes in the drafting of wills and in estate planning, get recommendations of specialists from the county bar association. It is very important that your will be well drafted, clearly setting out your wishes.

Wills are "ambulatory," meaning that you can always change them. Once you have made a will, you should review its provisions from time to time, to make sure it still reflects your wishes.

*Linda J. Sosnowitz, Smith Class of 1969, is a partner in the firm of Stapper & Van Doren in New York City specializing in trusts and estates.*