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## EC67-1189 It's Yours, It's an Estate

Clara Leopold

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# IT'S YOURS, IT'S AN ESTATE



Extension Service  
University of Nebraska College of Agriculture and Home Economics  
and U. S. Department of Agriculture Cooperating  
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This bulletin presents basic information about wills as a means of distributing your estate.

It is not meant to answer complicated questions that arise in unsettled estates or to give legal advice or to answer any questions about personal legal matters. These are problems to be handled only by a well-informed attorney.

The material presented herein is designed to help Nebraska families understand some of the procedures about wills and estate planning. A well-informed person is more likely to realize the advisability of seeking professional advice in order to avoid legal trouble and personal difficulties and is better able to ask intelligent questions.

Last will and  
testament  
of John T. Smith

# IT'S YOURS, IT'S AN ESTATE

By Mrs. Clara N. Leopold, State Management Specialist  
University of Nebraska College of Agriculture  
Lincoln, Nebraska

Are you one of the thousands who think that an "estate" is something only the rich need to do something about? The more you are worth, the more your dependents stand to lose when there is no well thought out plan; but the less you are worth the less you can afford to lose.

There are three inescapable facts which everyone should recognize:

- (1) You are going to die.
- (2) "You can't take it with you."
- (3) Someone else is going to get your possessions.

For some reason the practice of drawing a will seems to be confined to the rich or near rich -- the people who usually need a will the least.

Common sense should tell a man that it is the spouse whose husband leaves an estate of very small proportions who most needs the clear, red-tape cutting help of a will. This is just as important for young people as it is for older people.

Many are the tragedies that a little forethought could have prevented. Some of the most distressing involve small estates, especially when a young mother or father needs all the available financial help to bring up and educate surviving children.

The time to make your will is now while you are still competent -- not when you are on your death bed! Like insurance, it provides immediate protection for your family. And it gives you "peace of mind" -- the satisfaction of knowing that you have fulfilled a major obligation to your loved ones.



## WHAT IS A WILL?

A will is a legal document, by which a person disposes of his property, to take effect after death. It is the only way of assuring that his or her property will be distributed as he or she wishes.

A properly drawn will greatly simplifies the distribution of an estate; it not only hastens settlement for the heirs but often avoids financial and legal tangles.

In effect, everyone has a will whether he has made one or not! You may have your own drawn according to your wishes and to meet your specific needs -- or you may have a substitute prepared for you by Nebraska Revised Law of 1907.

Who knows more about you, your family, your property -- you or the state law? And no matter how many or how few possessions you have, it's an estate. You have the moral and legal right to say how these possessions will be handled after your death.

Contrary to some opinions, a properly drawn will is not easily broken. And the attorney's charge for helping you is minor compared to litigation expense growing out of a poorly drawn will, or of having no will at all.

## REQUIREMENTS FOR A VALID WILL

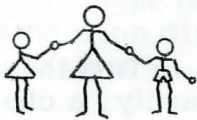
In Nebraska the requirements of a valid will are:

1. You must be of lawful age
2. The will must be in writing.
3. The will must be signed by the testator in the presence of witnesses.
4. There must be at least two witnesses, not beneficiaries under the will.
5. You must be of sound mind and memory -- thus to assure your witnesses you are mentally sound you inform them in some manner that you are signing your will, before you sign it.
6. Witnesses must sign the will in your presence and in the presence of each other, after you have signed it. They need not know the content of your will, only that you know what you are signing.

## WHO GETS YOUR POSSESSIONS IF THERE IS NO WILL?

Before you decide you don't need a will make certain you know and understand what will become of your possessions when you don't have a will.

As in every state, there are laws in Nebraska that direct how the property of the deceased person who has made no will shall be distributed among his heirs. The diagram below describes briefly what happens to the property of a married man who has not made a will:



### Survivors

### Division of Property

Widow

1/4 to widow

Step-children of widow

3/4 to children

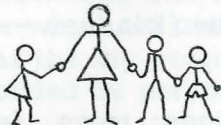


Widow

1/2 to widow

One child

1/2 to child



Widow

1/3 to widow

Two or more children

2/3 to children



Widow - no children

1/2 to widow

Husband's parents

1/2 to parents



Widow - no children

1/2 to widow

No husband's parents

1/2 to brothers

Husband's brothers & sisters

and sisters.



Widow - no children

All to widow

No husband's relatives

See complete chart on page 15 for descent and distribution of Property in Nebraska, if no will is made.



It should be noted also that in Nebraska the husband and wife take in the same manner and proportion of the estate of their deceased spouse. Thus in the diagram, should the wife die first, without a will, the husband would receive from her estate in the same proportion as shown here for the widow.

Furthermore, this chart indicates the way an estate would be distributed under the law as it is now. What the law will be when you die, no one can tell.

When you make your will you cannot let the matter rest there. Any will should be kept up-to-date.

One of the saddest things that can happen to a bereaved family is to find that a will is far out-of-date, either by a change in the law, a change in the family, a change in financial situation or a change in real and personal holdings.

There is still another aspect of change in the laws beyond those of descent per se. Tax laws change, and this can have a marked effect on your estate unless changes in your will are made accordingly. Since a will does not "speak" until your death, a revision made when the law changes may save money for your heirs.

#### WHAT IS MEANT BY PROPERTY

Through the ages property has been generally divided into two classes -- real property and personal property.

Real property, sometimes called real estate, is the land, buildings, trees, fences and other things definitely attached to the land, as well as oil, water and minerals under the surface.

Personal property is everything other than real property. This includes such things as stocks, bonds, money, bank accounts, livestock, machinery and farm equipment, automobiles, feed and supplies, furniture, clothes and jewelry. These are sometimes called movables.

The property (both real and personal) which a person leaves at the time of death is referred to as an estate.

#### IS JOINT TENANCY A SUBSTITUTE FOR A WILL?

Many people have the false impression that property owned jointly by the husband and wife completely solves all problems and eliminates the necessity of a will. Before wandering into any kind of joint ownership make sure that you know and understand the many possible pitfalls into which you can tumble.

Granted, in some cases and for certain kinds of property, joint tenancy may be a useful device. But there are tax hazards of which few people are aware, as well as other complications and expense. In any case you cannot escape inheritance nor estate taxes by owning your property in joint tenancy, nor can a good title be conveyed until such taxes are determined and paid.

Other disadvantages you might like to consider are:

...The heirs are assured nothing, because the surviving spouse has complete freedom to sell or otherwise dispose of the property.



- ...Also, if the surviving spouse remarries, the second mate automatically qualifies for dower rights\* in the property.
- ...If children are born to the second marriage, they are in position to inherit a portion of the property.
- ...During the existence of the joint relation, either joint tenant (owner) may sell his or her undivided interest. This destroys the joint tenancy and right of survivorship, and makes the purchaser and the remaining joint tenant owners in common, without right of survivorship.
- ...In any type of joint arrangement, difficulties can occur if a husband and wife die in a common disaster. A will can simplify procedures to beneficiaries in such circumstances.

### WHY NOT DO-IT-YOURSELF?

A person has the legal right to make his own will, but with few exceptions it is poor economy.

Drawing up a will should not be a do-it-yourself project. The help of a competent attorney is needed. He can tell you, for example, about the uncertainties, possible tax advantages and disadvantages, and the marital deductions that are possible under the law which will conserve the estate. This requires not only training, experience and skill that the lay person does not have but -- equally, if not more important -- judgment unclouded by personal feelings.

A will should say exactly what you mean, expressed in legal terms. If there is any room for question, there will be delay at best, bitter fights and costly litigation at worst, and often a final decision quite different from your intentions.

Perhaps you feel that you can say just what you mean in simple terms without using the technical legal phrases of a trained attorney. Perhaps you can but the real test will come in the courts after your death.

The phrases and words used in wills prepared by an attorney have been tried in the courts and have exact meanings attached to them, so that there is no question about their intent. Your wording may not say exactly what you mean to others who will read them when your will is probated and you will not be there to do any interpreting.

Also, if a will does not conform to legal technicalities, it is no will at all. Home-made wills have been the source of much expense and trouble.

What about the printed will forms sold in stationery stores? They usually "guarantee" nothing but legal headaches when presented for probate. To be acceptable, a will must be hand-tailored to fit the laws of the state in which it is drawn.

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\*A widow's or widower's life portion of the spouse's real estate by law.



Consult your attorney as a friend. Tell him everything about your life, your home, your finances, the success or failure of your marriage, your chances for business or professional success in the future.

Consider him a paid professional friend who is bound by ethics and the standards of his calling to protect your confidence and to act in your best interests. The feeling of assurance that your family will get the estate as you want it distributed will justify the expenditure of a few dollars for the services of a competent attorney.

### PREPLANNING FOR YOUR WILL

Preplanning gets all the information together ahead of time so that you, yourself, can look at all your holdings as a unit. At least, it gives you an opportunity for some solid thought, based on your own facts, on just how you want to distribute your worldly goods so your survivors will experience a minimum of adjustments and problems.

Add to this the time you save the attorney and thereby the money you save yourself by being ready to supply complete information and to make a sound decision.

On Pages 11 & 12 and 13 & 14 is a form on which much of the needed information can be recorded.

You may want to add a record of jewelry and traditional heirlooms of sentimental value, noting to whom they are to be given. This inventory can serve you as an orderly, systematic record for many uses other than the making of a will. It can prevent confusion, delay and loss of money:

- ...In case of a crisis, such as loss by fire or theft.\*

- ...By providing a summary of financial situation.

- ...By possibly saving dollars in payment of debts.

- ...By clarifying inheritance and other business matters.

It is a good idea to fill out two copies of your preplan inventory -- one to go in your safe deposit box and one for your business center at home.

The wife, as well as the husband, should be familiar with family business affairs. Older children should know where business papers are kept and persons to contact for advice in an emergency.

### WOMEN NEED WILLS, TOO

The fact that most of the suggestions in this bulletin seem to be aimed at men doesn't mean that making a will is just a man's job. If the wife owns property in her name -- and more and more women do -- it is just as important for her to make a will as it is for the husband.

Another reason for her having a will, even though she owns no property, would be to take care of both estates in the event of a common disaster -- man and wife die together, say, in an automobile accident.

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\*A complete household inventory, in addition to this record, also would be useful in determining net worth, and settling claims for insurance losses. See EC 64-1128, Annual Household Inventories, available from any Nebraska County Extension Office.



Your children -- who will get them? Who will look after their business affairs until they become of age? Consider what might happen if you and your wife died suddenly.

### YOUR DISTRIBUTION

Having studied the written record of your holdings -- real and personal, the next step would be to decide how you want your property distributed. It is helpful to work out a simple genealogy showing nearest relatives.

In making specific bequests consider whether you are likely to have the article at the time of your death.

If you give a sum of money be cautious about the total amount of all the bequests you make. Unless you have enough cash in your estate at the time you die, some of your property will have to be sold to pay these cash benefits. This can hurt the members of your family who receive the remainder of the estate.

To overcome this you might make cash gifts as a percentage of your "residuary estate" (all that you have left after payment of your debts, funeral expenses, specific bequests, trust funds, death taxes and the like).

### REVIEWING YOUR WILL

A will should be reviewed periodically to keep it up-to-date.

There are a number of reasons or events which can make it vitally important to change your will promptly. Here are some of the most important:

- ...Births, to you or your heirs, death of heirs mentioned in your will, marriage, divorce.
- ...Moving to another state.
- ...A change, for better or for worse, in family fortunes.
- ...Purchase or sale of property specifically mentioned in the will.
- ...Changes in tax laws.
- ...Witnesses no longer available.
- ...Circumstances are different -- people, places, relationships.

Don't hesitate to change your will as often as you have good reason -- but don't try your own hand at it. Changes require the same expert care as the original, and the same safeguards. If a completely new will is drawn, make sure it expressly revokes any previous wills. A new will may not, as many people think, cancel earlier documents automatically. You must say so.



## LAST INSTRUCTIONS

It is a good idea to keep a copy of your current will in your business center with a note on it to tell where the original is filed. You can review the copy easily any time you like, and your family will be able to locate the original document readily when it is needed.

Although you have a good will and keep it up-to-date, don't overlook the immediate expenses associated with death that are incurred. Settling an estate, large or small, requires an outlay of cash for prompt payment of funeral costs, debts and death taxes. Provision for such costs should be made with liquid assets, lest the estate is markedly reduced for lack of adequate cash.

### Life Insurance for Liquid Assets

Life insurance is one way to provide these funds. It has a number of advantages. It is an economical way to provide full liquidity no matter when death occurs; and it can provide funds to avoid forced sale of estate assets. Your attorney can be of real help in determining how much and what type of liquid assets you need to provide.

It is also a real service to your executor or attorney to have written a letter of last instruction, which is separate and apart from your will.

This could state where your Estate Inventory is to be found. Instructions for funeral and burial would be helpful if you have any special wishes about location -- for example, as a veteran, you could be buried in a certain national cemetery. Or if you have no family burial plot, exercising your veteran's right to burial in a national cemetery could have your estate some expense. You may have other personal wishes to include about your burial and funeral.

### Are The Names Known?

Your father's name and your mother's maiden name will be asked for on the death certificate. Many times these names are not known by all the family members. Perhaps a statement of reasons for actions taken in your will can explain to the heirs your objectives in making the decisions you did.

Such a letter does not substitute for a will or serve as a will but it eliminates much uncertainty and confusion when death occurs. It gives the survivors a better chance to handle financial affairs in an orderly manner. It will also help you get a clearer picture of your affairs.

Social Security Number \_\_\_\_\_ Where Card Kept \_\_\_\_\_

Adviser	Name	Address	Phone Number
Insurance Agent			
Executor of Will			
Lawyer			
Banker			
Broker			

Type	Company	Policy Number	Policy Amount	Loans Against, Amount and Holder	Where Policy Kept
Life					
Hospitalization					
Car					
Fire, Theft					
Liability					

Type	Name of Bank	Location	Account in Name of	Bank Books Kept
Checking				
Savings				

[illegible]



## COMMERCIAL STOCKS AND BONDS

Kind (Common, etc.)	Company	Serial Number	Date Purchased	Number of Shares	Cost per Share	Where Kept

## REAL ESTATE

Type	Location	Purchase Price	Mortgage Amount and Holder	Where Records Kept

## AUTOMOBILE

Make	Model and Year	Purchase Price	In Whose Name	Amount of Loan	Engine Number	Where Papers Kept

## DEBTS

Description	Name and Address of Person Owed	Amount	Payment Plan	Final Pay't Due	Where Records Kept

## PAYMENTS DUE US AND RETIREMENT PLANS

Description	Name and Address of Person Owing	Amount	Payment Plan	Final Pay't Due	Where Records Kept

## OTHER IMPORTANT PAPERS

Type of Paper	Where Kept	Type of Paper	Where Kept	Type of Paper	Where Kept
Will for		Deed to Burial Plot		Passports	
Will for		Divorce Records		Education Record	
Will for		Military Service Records		Employment Record	
Marriage Certificates		Business Records		Important Keys	
Birth Certificates		Rental Property Records		Fraternal Order Papers	
Baptismal Records		Cancelled Checks		Pension System Records	
Adoption Papers		Income Tax Records			
Citizenship Papers		Household Inventory			
Death Certificates		Patents and Copyrights			

Social Security Number \_\_\_\_\_ Where Card Kept \_\_\_\_\_

Adviser	Name	Address	Phone Number
Insurance Agent			
Lawyer			
Banker			
Broker			

Type	Company	Policy Number	Policy Amount	Loans Against, Amount and Holder	Where Policy Kept
Life					
Hospitalization					
Car					
Fire, Theft					
Liability					

Type	Name of Bank	Location	Account in Name of	Bank Books Kept
Checking				
Savings				

[illegible]



## COMMERCIAL STOCKS AND BONDS

Kind (Common, etc.)	Company	Serial Number	Date Purchased	Number of Shares	Cost per Share	Where Kept

## REAL ESTATE

Type	Location	Purchase Price	Mortgage Amount and Holder	Where Records Kept

## AUTOMOBILE

Make	Model and Year	Purchase Price	In Whose Name	Amount of Loan	Engine Number	Where Papers Kept

## DEBTS

Description	Name and Address of Person Owed	Amount	Payment Plan	Final Pay't Due	Where Records Kept

## PAYMENTS DUE US AND RETIREMENT PLANS

Description	Name and Address of Person Owing	Amount	Payment Plan	Final Pay't Due	Where Records Kept

## OTHER IMPORTANT PAPERS

Type of Paper	Where Kept	Type of Paper	Where Kept	Type of Paper	Where Kept
Will for		Deed to Burial Plot		Passports	
Will for		Divorce Records		Education Record	
Will for		Military Service Records		Employment Record	
Marriage Certificates		Business Records		Important Keys	
Birth Certificates		Rental Property Records		Fraternal Order Papers	
Baptismal Records		Cancelled Checks		Pension System Records	
Adoption Papers		Income Tax Records			
Citizenship Papers		Household Inventory			
Death Certificates		Patents and Copyrights			

# Descent And Distribution Of Property In Nebraska, If No Will Is Made

THE DECEASED LEAVING	RECIPIENTS		UNPROVIDED FOR
Husband or wife not the parent of all the children of the deceased and there are one or more children or the issue of one or more.	Wife or Husband 25%	Children and Issue of Deceased Children 75%	Father and mother, brothers and sisters, some lineal descendants and next of kin, daughters-in-law, friends, charity, etc.
Husband or wife, parent of all the children of deceased, and there are two or more children, or one child and the issue of one or more.	Wife or Husband 33 1/3%	Children and Issue of Deceased Children 66 2/3%	Father and mother, brothers and sisters, some lineal descendants and next of kin, daughters-in-law, friends, charity, etc.
Husband or wife who is the parent of all the children of the deceased and there is only one child or issue of a deceased child.	Wife or Husband 50%	Child or Issue of Deceased Child 50%	Father and mother, brothers and sisters, some lineal descendants and next of kin, daughters-in-law, friends, charity, etc.
Husband or wife, no children nor issue of any deceased children.	Wife or Husband 50%	Father and Mother 50%	Brothers and sisters, next of kin, daughters-in-law, friends, charity, etc.
Husband or wife, no issue, no father or mother.	Wife or Husband 50%	Brothers and Sisters and Children of Deceased Brothers and Sisters 50%	Some next of kin, daughters-in-law, friends, charity, etc.
Husband or wife, no issue, no father, mother, brother or sister.	Wife or Husband 50%	Next of Kin 50%	Some next of kin, daughters-in-law, friends, and charity.
Husband or wife, no issue, no father, no mother, no brother or sister, nor other blood relative.	Wife or Husband 100%		Daughters-in-law, friends, charity, etc.
No husband or wife.	Children and Issue of Deceased Children 100%		Father and mother, brothers and sisters, some lineal descendants and next of kin, daughters-in-law, friends, charity, etc.
No husband or wife or children.	Lineal Descendants 100%		Brothers and sisters, some lineal descendants and next of kin, daughters-in-law, friends, charity, etc.
No husband or wife or issue.	Father and Mother 100%		Brothers and sisters, next of kin, daughters-in-law, friends, charity, etc.
No husband, wife, issue, father or mother.	Brothers and Sisters and Children of Deceased Brothers and Sisters 100%		Some next of kin, daughters-in-law, friends, charity, etc.
No husband, wife, issue, father, mother, brother, or sister.	Next of Kin 100%		Daughters-in-law, friends, charity, etc.
No husband, wife, issue, father, mother, brother, sister or next of kin.	State 100%		Daughters-in-law, friends, charity, etc.

NOTE: Personal property is distributed in the same way as real property, except for allowing family support for a maximum of one year and for allowing the surviving spouse or children the wearing apparel, ornaments, household furniture, exempt property and other property not to exceed \$200 in value. Also, a surviving spouse may have an interest in a homestead.



## ACKNOWLEDGMENTS

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"9 Questions to Ask before You Make a Will," - Farm Journal, March 1967.

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