

## ESTATE PLANNING

### 10 Things You Should Leave Out of Your Will, According to Experts

Are you unclear about the things you should leave out of your will when estate planning? Legal experts share the 10 items to exclude.



Many Americans underestimate the importance of estate planning. More than 50% of people who don't have a will say it's because they don't have enough assets to leave anyone, according to Caring.com's 2025 Wills and Estate Planning Study. And almost one in four respondents that did have a will admit to not updating the document since it was first written.

However, having a proper estate plan in place is essential, regardless of how much money you have, as it does more than distribute your assets; it outlines how your personal affairs will be managed after you're gone and the kind of medical care you want to receive. Estate planning is especially important for women and single adults, who often have fewer assets or support as they age.

No one particularly wants to think about death, though, especially your own. So, if the idea of estate planning has got you down, start with a will. It's the anchor of your estate plan and can help avoid probate, which forces your heirs to enter a potentially lengthy legal process to distribute your assets.

### **Things you should leave out of your will**

Not everything should be included in your will. Kiplinger solicited input from several legal experts on what items to exclude from your will when estate planning. Here's what they recommend.

#### **1. Gifts or bequests to a child or other individual with special needs**

"You need to be very careful when leaving assets to a person with special needs. Often, that individual receives government benefits that are means tested (i.e., Medicaid, SSI), and leaving assets outright to them can cause them to lose their government benefits or the inheritance. If you are leaving assets to a person with special needs in your Will, be sure to leave it in a Supplemental Needs Trust."

— Melissa Negrin-Wiener, ESQ., Senior Partner, Cona Elder Law.

#### **2. Pets, and money for their care**

"We love our four-legged family members and often want to ensure they are looked after even if we pass before they do. But pets are considered property and can't be named as beneficiaries or inherit anything from a will. You could earmark a certain amount of money and ask a family member to care for the pet, but once the funds are released to them, there

is no legal obligation to follow your exact wishes. So, it is best to leave pets out of the will and instead set up a pet trust to ensure the well-being of your furry friend.”

— Russel Morgan, Principal at Morgan Legal Group

### **3. Non-probate assets**

"Your will only controls the transfer of probate assets. Non-probate assets are all assets that have a designated beneficiary, such as life insurance, 403(b), brokerage accounts, IRAs, even bank accounts can name a beneficiary and be non-probate. If you name someone to take a non-probate asset in your will the problem is that the beneficiary designation will supersede your will. If you have the same named beneficiary on the account and in the will, this is not a problem. If the beneficiaries are different, this can cause contention and invite challenge to your estate plan."

— Daniel R. Bernard, Estate Attorney and Partner, Otterbourg, P.C.

### **4. Terms that leave fixed, high or unrealistic dollar amounts to individuals**

"If your estate doesn't have as much money in it someday as you assume, you could be draining funds away from your primary beneficiaries, because your will is stuck with a large, fixed sum of money that is required to pay out. For example, if your will said "I leave \$100,00.00 to my friend, Robert, and the rest in equal shares to my children," and you wind up only having \$50,000.00 in your estate when you pass away, your children likely won't receive anything because they are stuck with Robert's large bequest ahead of their residuary distribution. It is much better to leave property in shares or percentages to your beneficiaries, which allows your estate to flexibly adapt to any size of a portfolio."

— Andrew Rosenberg, Estate Planning Attorney, Grieve Civil Law

### **5. Conditional gifts**

"I'd also recommend not including any conditional gifts such as 'If Anna stays married to Ben, Mary shall receive \$100,000 from my assets.' We want to exclude conditional gifts because they can lead to complications and legal challenges and make the estate more difficult to settle."

— Jonathan Geserick, Estate Planning Attorney, Texas Probate Pros

## **6. Secure information**

"I regularly explain to clients that social security numbers, financial account information and passwords to accounts should never be provided within the will itself. The reason for such is that upon death, the will is filed with the Court in the State where the decedent lived. At that point, the will is a "public" document whereby potential heirs and court staff may view it. Such information opens the possibility for individuals who are not otherwise authorized to access the accounts to now possibly gain access and wipe out those accounts. If you are wanting to ease the burden on your executor to identify your assets, debts, accounts and passwords, consider creating a separate document for that information and safekeeping it with your will and other important documents. If it is a separate document, it does not have to be filed like the will and could be extremely helpful to your executor."

— Ashley N. Higginbotham, Supervising Attorney, Deming, Parker, Hoffman, Campbell & Daly, LLC

## **7. Funeral instructions**

"First, don't specify funeral arrangements in your will; they may not be reviewed until after the funeral. Instead, communicate your wishes directly with your loved ones or include them in a separate document."

— Jamie E. Wright, Founder of The Wright Law Firm

## **8. Guns**

"In 2024, there is one class of assets that I would absolutely exclude from distribution by will — guns. Guns are a unique asset and require the owner meet state and federal regulations (i.e. minimum age, mental capacity, etc.), and for that reason, we encourage gun trusts to transfer and track those gifts without running afoul of the law."

— Monique Hayes, Estate Planning Attorney and Partner at DGIM Law

## **9. Disparagements to potential beneficiaries**

"Another item I would not include would be any disparagements to potential beneficiaries. I have represented many clients who wanted to disinherit a child and wanted to list the reason. This will just cause more hurt feelings, and anger, and could lead to a challenge of your Will. It is much better to simply state 'for reasons best known to me I make no provision for X'.

— Daniel R. Bernard, Estate Attorney and Partner, Otterbourg, P.C.

## **10. Business interests**

"Passing business interests within a Trust will allow for more privacy when it comes to business holdings and information."

— Melissa Negrin-Wiener, ESQ., Senior Partner at Cona Elder Law

"Consider setting up a separate agreement for the distribution of your business to avoid probate and ensure a smooth transition."

— Michael Dale, Vice President of Investment Services at Navy Federal Investment Services

**NYSUT NOTE: Need legal advice beyond your will? The NYSUT Member Benefits Trust–endorsed [Legal Service Plan](#) provides expert legal advice on personal legal matters, thanks to its national network of attorneys. Whether you're seeking advice on debt consolidation or business-related matters, you can get the expertise you need at a reasonable rate.**

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