

# Illinois Legal Update

Insights and Developments in the Law

Fall 2006

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## **The Benefits of Having a Will**

Although a will is not required by law, there are many benefits to having a will when you die. Having a valid will ensures that your property passes to the people you want to receive it, in the amounts that you determine, rather than being distributed according to Illinois law. Additionally, a will informs both the court and your loved ones of your choice for guardianship of your minor children.

### **What Happens If You Die Without a Will?**

If you die without a will in Illinois (called dying “intestate”), state law determines who receives your property and in what amount. Illinois law applies inflexible rules and specific formulas for calculating what each of your heirs will receive. The law does not make presumptions about or consider your wishes; nor does the law make a distinction among particular belongings that would be distributed as part of your estate. Without a will designating who should receive what, your heirs may argue over who gets what, and the court might force the property to be sold and the money from the sale divided. A will can help eliminate such difficulties.

If you die intestate and leave behind a spouse and children, Illinois law provides that one-half of your estate passes to your spouse, and the remaining one-half is split equally among your children. However, if any of your children are minors (and therefore legally unable to handle property), the court will have to set up expensive guardianship estates for them and appoint someone to handle their inheritance until they reach their majority. By having a valid will, you avoid this problem by leaving your entire estate to your spouse or by designating a trustee or custodian for your children.

You cannot leave your property to a relative, friend, charity, or church without a will. A will gives you the opportunity to benefit the people and institutions that you think are deserving. You can use your will to determine the amount of your estate that will pass to the beneficiaries you choose, regardless of their relationship to you, and you can leave specific items of sentimental value to those who you believe would enjoy them the most.

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# Warranty Limitations Do Not Always Apply

Cars, appliances, computers, and almost anything else you may buy seem to come with a warranty. Although most people do not think about it, a warranty is only as good as what the warrantor promises to cover. Thanks to a recent decision by the Illinois Supreme Court, warranties in Illinois now cover more than they used to.

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*The court awarded the plaintiff an amount that included \$3,500 for the plaintiff's inconvenience and loss of use.*

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The case involved a motor vehicle warranty. The car in question was sold with a remote starter that did not work very well, and it spent a long time in the shop before the problem was finally fixed by installing a different starter. The plaintiff sued, arguing that the car was so useless that the warranty had been breached even though the problem had (eventually) been fixed. The court agreed and awarded the plaintiff \$8,500 in damages, an amount that included \$3,500 for the plaintiff's inconvenience and loss of use.

The car company appealed and claimed that the award was improper because the warranty specifically provided that it would not cover "loss of time, inconvenience [or] loss of use of the vehicle." Although the supreme court agreed that the warranty contained this limitation, it refused to enforce it because it found the limitation to be unconscionable—that is, too unfair

to be enforced. It reached this conclusion for a number of reasons, including the fact that the limitation in the warranty was preprinted and entirely written by the car company, the buyer had no ability to bargain to change the warranty's terms, the limitation benefited only the car company, and (most importantly) the limitation on damages

was not shown to the buyer until *after* the car had been delivered.

All of these elements showed that it would be unfair to enforce the limitations of the warranty in this case, and presumably in any other case where a limitation on what is covered by a warranty is not communicated to the consumer before the sale is complete.

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## Financial Planning for a Disaster

When a natural or man-made disaster strikes, be it a hurricane affecting an entire region or a gas leak affecting one house, it is only natural and appropriate to think first of the very basics of life: safety, shelter, food, and water. But it also makes sense, in the quiet of normal daily living, to make plans for money matters in the immediate aftermath of a disaster.

Here are a few pointers:

- Keep the following items in a place that is easily accessible by you in an emergency, but not so apparent as to invite theft: forms of identification, such as driver's licenses, insurance cards, Social Security cards, passports, and birth certificates; enough checks and deposit slips to last a month, or at least a checking account number; ATM cards, debit cards, and credit cards; telephone numbers and account numbers for providers of financial services; the key to your safe-deposit box; and some cash.

- Make copies of your most important documents, ideally on disks, and keep the copies well outside of your home area.
- Use a safe-deposit box for items that you are not likely to need in a hurry, such as birth certificates and originals of contracts. Other items can go in a sturdy safe at home.
- In the same waterproof, portable "evacuation bag" in which you can keep medications, first-aid kits, flashlights, and so forth, keep some of the up-to-date financial papers mentioned above. But secure it well, lest you inadvertently provide a treasure trove of your financial information to a thief.
- Choose automated services over dependency on writing and mailing checks and trips to your bank. You can weather a storm financially more easily with direct deposit, automatic bill payments, and Internet banking services.

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# Landlord Can Be Liable for Rape

Generally, a person can be liable under the law only for injuries caused by that person's carelessness. This is especially true where the injury is caused by the intentional act of a third person, such as where a criminal causes an injury while committing a crime. However, there are some exceptions to this general rule, including one discussed in a recent Illinois court case.

The suit was brought against a landlord by her tenant. The tenant claimed that when she moved in, the landlord promised that the property would be well lit by exterior security lights, but the landlord failed to keep the lights in good condition. As a result, the exterior of the building was dark, and one night, when the tenant was returning home from the opera, she was raped by an attacker who had been hiding in the shadows.

The tenant sued her landlord, claiming that the lack of lights had allowed the attack to occur. The Illinois trial court ruled that the landlord could not be liable for the tenant's injuries, but the appellate court reversed this decision and sent the case back for trial. The appellate court found that there was evidence that the landlord had voluntarily committed to making sure that the building was well lit for the security of her tenants. If a person volunteers to do something that he has no legal obligation to do, the law will sometimes allow the individual to be liable if he does not perform as promised, or if his performance is insufficient.

The court found that the landlord had promised to provide security lights, but that most of the security lights had burned out and thus were useless. Because the landlord had volunteered to provide lights and did not do so, the court ruled that there was a fact question about whether the lack of

lights led to or contributed to the rape of the tenant, even though the immediate cause of the tenant's injuries was an illegal act by a third person. This case illustrates the complexities of the law of negligence, which has rules and exceptions . . . and exceptions to the exceptions.

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## Preventable Mistakes in Nursing Homes

Any time a person is prescribed one or more drugs, there is a danger that the patient will suffer what is called an "adverse drug event," that is, some injury resulting from the use of the drug. However, according to a study published in the *American Journal of Medicine*, nursing home residents are especially susceptible to adverse drug events, and they suffer almost two million such events each year, about 86,000 of which are life-threatening. Most disturbingly, the authors of the study estimate that 70% of these adverse drug events are preventable.

There are a number of reasons for the high number of adverse drug events in nursing homes. Residents of nursing homes are often on multiple medications, increasing the chance of one drug interacting with another in an unexpected or dangerous way. Doctors sometimes make errors in pre-

scribing drugs for a patient, or the patient may not be properly monitored by the nursing home staff to make sure that a prescribed drug is not causing adverse side effects. And, there is always the chance that a mistake will be made in actually administering the drug—giving the patient the wrong pill or giving the patient the correct pill in the wrong dosage or at the wrong time. Any of these mistakes can lead to an adverse drug event.

Given that most nursing home patients and their families are not doctors or pharmacists, it can be difficult to prevent adverse drug events. However, you can make sure that a loved one who lives in a nursing home is treated by a competent doctor, and you can ask what rules are in place to prevent mistakes in dispensing drugs and to help people who suffer an adverse drug event.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Illinois law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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## Benefits of a Will

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### Wills and Your Children

In addition to your property, a will can allow you to settle issues relating to your minor children. If you die without a will and your children have no surviving parent, the court must name a guardian—grandparents or other close family members do not automatically get custody of the children. A will is crucial to inform the court of your wishes and to help ensure that your children are cared for by someone you trust. Naming a guardian in your will can save the cost of a court-ordered guardianship, a process that is often more expensive than the cost of having a will done in the first place.

Another benefit of having a will is that you may designate an executor to administer your estate. This is especially important if you have minor children. For instance, the person who you think is the best person to raise your children as their guardian might not be the best money manager. A will allows you to name both a guardian and an executor who will work together to safeguard your children's welfare. People sometimes designate a member of one parent's family to serve as the guardian of the minor children and a member of the other parent's family to serve as the executor. This allows both families to feel that they have a hand in the upbringing of the children.

Finally, for those with larger estates, a properly drafted will may enable you to minimize or even eliminate estate taxes, ensuring that more of your money goes to your family.

### How Do You Make a Will?

To draft a will, you must be at least 18 years old, mentally competent, and free from improper influence. Your will must be written, signed, and witnessed according to Illinois law. You may change your will simply by drafting an amendment to it (called a "codicil") or by drafting a new will. Whether you change your will by a codicil or by

a new will, each document must be properly written, signed, and witnessed.

Once you have a will, you should review it if any of the circumstances of your life change—such as marriage, divorce, birth of a child, or a significant change in financial status. This will help ensure that your will continues to fit your needs and wishes.

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## Do You Have Residences in More Than One State?

If you spend time in any given year in residences in different states, somewhere in your travels you also may want to schedule an appointment with your professional tax advisor. One topic for discussion would be the legal concept of domicile.

In simplest terms, a person's domicile is the place where he or she intends to return after leaving another location. The special significance of where a domicile is established is in tax planning. An individual's domicile determines which state's income, gift, and estate tax laws apply, and in which state or states a person, trust, or estate is taxable. The rules that will govern the administration of an estate also depend on the state of domicile. Inadequate attention to establishing and documenting an intended state of domicile could mean that even the best-laid estate plan might go awry because the

laws of a different state could apply. The end result could be an unexpected tax burden that otherwise could have been avoided.

Although the basic definition of "domicile" is simple enough, many different criteria may be taken into account in pinpointing a state of domicile. No one factor is controlling, and the states differ in the criteria that they use. The address included in a person's will may be a good indicator of the person's domicile. A nonexhaustive list of other factors would take into account in what state a person votes, registers an automobile, has a driver's license, keeps important personal property, pays state and local income and personal property taxes, last applied for a passport, and keeps the bulk of his or her money. Contrary to the old saying, you can go home again, and it is a good idea to make sure that you and the government agree on where that home is.