

# LEGAL EASE



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## **Will issues that you should discuss with your attorney**

I am asked frequently about self-preparing a Will through an online service or through a program from an office supply store. The questioner usually wants to know why it is necessary to use (and pay for) the services of an attorney when other presumably less time consuming and perhaps less expensive options are available. One reason to use a qualified attorney is that online and store bought programs are rarely state specific enough to be sure that your heirs will not run into problems administering your estate. The personnel at ElderLawAnswers give two other specific reasons that meeting with an attorney can aid you in making sure that your wishes after your death are clear and also consistent with Pennsylvania law. (<https://www.elderlawanswers.com/use-your-will-to-dictate-how-to-pay-your-debts-16391>) (<https://www.elderlawanswers.com/disinherit-a-relative-can-be-complicated-6626>).

A Will is used to direct where your assets are to go when you die. However, some individuals die with debt. Generally, the executor is charged with paying the decedent's debt from the estate proceeds. However, the testator can plan for some debt to be paid from certain assets or by certain persons. A mortgage or a car loan is considered secured debt and is generally "secured" by the property or asset to which it is attached. For instance, if the house the decedent owns has a mortgage, and mother wants one particular person to inherit the house, she can specify that the house is inherited with the mortgage attached, obligating the new owner to continue to pay the debt and relieving the other heirs of that debt obligation. On the other hand, if a mortgage exists, father can specify that the property be sold to pay off the debt attached, and the remaining funds, if any, be distributed to the heirs.

However, unsecured debt should be payable out of the estate assets, which can include real estate and other property with value. This will include credit card bills, medical bills, and administrative expenses of the estate. So if uncle wants someone to have a valuable collectible, the testator can specify the bank accounts be used to pay debts rather than selling the collectible. If aunt wants certain liquid assets to be given to someone, then she should specify how to pay outstanding debt, if possible. Note that if life insurance names beneficiaries, or if qualified accounts have beneficiaries, the beneficiaries will not be required, in most cases, to pay unsecured debt from those accounts. Inheritance tax is still owed on accounts with beneficiaries but not on life insurance.

Another issue that arises is how to disinherit a relative. In Pennsylvania, it is not possible to totally disinherit a spouse. You can exclude them from a Will but they are entitled to a one-third elective share by statute. Disinheriting an adult child is possible but you should discuss this with an attorney for the appropriate language to indicate your clear intent. Disinheriting a minor child is usually not permitted. Will contests are expensive and messy, and family squabbles can drag out for many years, leaving many families without their inheritance or any relationship with family members. Counseling provided by an attorney will help to make sure that your estate plan is what you want and will avoid these and other pitfalls.