

Ten Common Misconceptions About Wills

- 1 If I don't have a will, my property will go to the state.** False. If you don't have a will, your property will go to your heirs under the law of descent and distribution in Arizona. Your property will go to the state only if you die without a will and you have no living relative to inherit it.
- 2 If I have a will, all of my property will automatically pass under it.** False. Some or all of your property may pass outside your will by reason of survivorship provisions, joint title, pay-on-death clauses, and beneficiary designations in deeds and contracts. For instance, life insurance proceeds will be payable to the beneficiaries that you have designated in the insurance contract, regardless of the terms of your will.
- 3 The will that I executed before I moved to Arizona is invalid.** False. If your will was valid in the state or country in which it was executed, it is valid in Arizona. (Yet it is a good idea to update your will in your new state.)
- 4 I have to execute a living trust to avoid taxes on my estate.** False. Most estates will not be subject to taxation with or without a living trust. In 2008, up to \$2,000,000 is exempt from estate taxes (assuming no lifetime transfers). The unified credit exemption is scheduled to increase to \$3,500,000 in 2009, before repeal in 2010. If you are married, you can leave an unlimited amount to your spouse without payment of any estate taxes.
- 5 If I execute a will, my estate will be subjected to costly attorney fees and probate charges when I die.** False. It is not inherently expensive to probate a will in Arizona. An informal and inexpensive probate process is available in most cases. There are no separate probate fees, other than a small filing fee to start the case.
- 6 It is always less expensive to leave my property under a living trust than a will.** False. In some cases, it is actually more expensive to create a living trust than to informally probate an estate. It depends on the nature and value of your assets.
- 7 If I execute a will, I will be unable to create a trust for my children.** False. One or more trusts can be created in a will. These are known as "testamentary trusts," and take effect upon the death of the person executing the will. By use of a testamentary trust, you can set aside money or property for the future benefit of your children. The testamentary trust will be administered by the trustee you appoint in your will.
- 8 If my estate is probated under a will, my assets will be tied up for years in the courts.** False. Informal probate can be started almost immediately after your death, allows the personal representative immediate access to your assets, and, in most cases, can be completed in nine months or less.
- 9 My will must be filed after it is executed.** False. There is no provision for the filing of a will in Arizona, until after the death of the testator. The original stays with the testator after execution.
- 10 It is better to keep my will in a safe deposit box than at home.** False. Accessing a safe deposit box is often difficult and time consuming after the death of the person renting the box. A better place to keep your will is at home with your other important papers, where family members can easily access it.

This article was excerpted from Estate Planning in Arizona: What You Need to Know, by Donald A. Loose (Wheatmark 2008), and edited for this publication. Reproduced with the author's permission.



Phoenix Office:
11240 N. Tatum Blvd., Suite 110
Phoenix, AZ 85028
602.971.4800 • Fax 602.953.3621

Tucson Office:
3573 E. Sunrise Dr., Suite 215
Tucson, AZ 85718
520.615.3100 • fax 520.615.3110

www.loosebrown.com

Principals: Donald A. Loose & C. Kyle Brown

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