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Trawick's Redfearn Wills And Administration In Florida
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Chapter 3. Wills and Other Testamentary Instruments

Why a will should be made

There are many valid reasons why a person should make a will. The chief one is that a will gives the testator the power to determine how his property will be distributed, rather than leaving the distribution to be determined by the laws of intestate succession. It is impossible for him to know when he will die or who will be his heirs at law at the time of his death or what he will own or owe. Even if a person owes no debts and wants his estate to be distributed according to the laws of descent, it is better to leave a will saying this so his personal representative can dispense with many of the formalities and some of the expense connected with estate administration. The owner is much better acquainted than anyone else with the condition of his assets. A will is a necessity when the owner has an estate of considerable magnitude, particularly if it is heavily indebted. By a will the owner can give many valuable directions for the marshaling of his assets and for the payment of debts and devises. He can also take advantage of all of the exemptions and deductions that may be available under the estate tax laws.¹

A person should not wait until his last hours to make a will,² when bodily pain and the fear of death may prevent a just disposition. It is a regrettable fact that testators often postpone making their wills until their hours are few and death is upon them. They then hurriedly try to dispose of the accumulations of a lifetime. This may be due to indifference, superstition, false economy or procrastination. Whatever the cause, the results are usually the same—litigation among the heirs, waste of assets and the promotion of family quarrels. If a will is to be made, the testator should employ a competent person to draft it rather than depend on his own efforts. If there is anything more conducive to litigation than intestacy, it is a will drawn by the testator himself.³

Through the medium of a will, the law gives a person the privilege of reaching back from the unknown and controlling the accumulations he made while living. Yet many good businessmen who have been extremely cautious in their business dealings and particular in their personal affairs die without having made wills. Some even attempt to draft their own wills and dispose of the earnings of a lifetime. These same men would not attempt even one important business act without expert advice. The act of making a will, on which may depend the future happiness of their loved ones and the harmony of family relations, they attempt themselves. If men would make their wills in the midst of health, when their minds are at their best, much of the bitterness sometimes aroused in the distribution of estates would never appear and many skeletons would remain undisclosed in family closets.⁴


Footnotes

¹ Many years ago the author had a client come to him with a stack of legal sized papers about an inch and a half thick. It was entitled as a lawsuit in Colorado. The client asked what it was all about. After examination, the lawsuit was found to be one to determine the heirs of an intestate. The client's great uncle John was the black sheep of the family, had gone to the Yukon in the early 1900s and had struck gold. He had no contact with his family after going to the Yukon. He left a very substantial estate, but no will, no wife or children. The client had never met him. It is likely that the decedent never knew the client existed. Nevertheless, the client enjoyed the receipt of a substantial sum as a result of the intestacy.

² Another precipitating factor in making a will is travel, particularly travel abroad. One millionaire client with many and varied investments called the author's office at 2:00 p.m. one afternoon and said he needed a will before taking his vacation. He was leaving
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by air for Europe the following morning before 9:00 a.m. It was a long night, but the will was prepared and signed early the next morning as the client and his wife departed for the airport.

John Marshall Gest in an address published in the American Law Register, November 1907, Vol. 55, No. 8 says:

   Every man who knows how to write, thinks he knows how to write a will, and long may
   this happy hallucination possess the minds of our lay brethren, for surely St. Yves, the
   Patron Saint of lawyers, extends to none a harder welcome in that life beyond than to
   the Jolly Testator who makes his own will.

St. Yves is the patron saint of lawyers. He lived 1253–1303 in Brittany. He was born just outside Treguier. It is located near the Brittany coast a little more than halfway from Mont St. Michel to the tip of the Brittany peninsula. He is buried in a church near his birthplace. He was canonized by Pope Clement VI. There is a memorial to him that says, translated from the Latin:

   St. Yves was of Brittany;
   He was a lawyer and not a thief,
   At which the people wondered.