Elder Consumer Protection Program

The Elder Consumer Protection Program at Stetson University College of Law’s Center for Excellence in Elder Law is an educational and information resource on general and legal matters regarding elder consumer protection and awareness. The program, which is supported by state funding, offers assorted materials and various services that provide and promote general knowledge, public awareness and assistance, and professional development and training.

The information contained herein is intended only as a brief overview on matters of general interest. It is not offered as legal advice, is not a definite statement of law, and is not a complete analysis of the area of law.

The applicability of law to a particular matter requires an exhaustive examination of the specific facts with the appropriate laws. If you have a specific legal issue or legal concern, you should always consult with an attorney for detailed legal advice.
What does a Will do?
Wills provide for the distribution of property you own at the time of death in the manner you choose, including appointing guardians for your children or providing for those outside your family. Without a Will, state law will determine who receives your assets.

Limitations of Wills:
There are things that generally cannot be given away in a Will such as jointly owned property; “payable on death” bank accounts; and life insurance policies. These types of property are considered non-probate assets, and pass according to the agreements covering such assets.

What types of Wills exist?
- SIMPLE WILL: Provides for the outright distribution of your assets.
- TESTAMENTARY TRUST WILL: A trust established in a person’s Will to come into operation after probating the Will and distributing the assets according to the Will.
- POUR OVER WILL: A Will that leaves some of your assets in a trust that you already had established before your death.
- JOINT WILL: A Will that two people make together, each leaving all of their property and assets to the other.
- SELF-PROVING WILL: A notarized Will that certifies that all signatures were proper to avoid delay and cost of probate.

Do I need a lawyer?
Legally, you do not have to use a lawyer to write your Will, but the Will must meet the state’s legal requirements in order for it to be valid. Also, due to the importance and potential complexity of a Will, you may wish to retain a private attorney to address your specific legal needs.

What to do to make an effective Will:
State law requires certain formalities of a Will to be observed in order for the Will to be valid. For example, most states requires that Wills be signed in the presence of witnesses. In Florida, a Will must be in writing and signed in the presence of two witnesses, who must then sign the Will in the presence of each other.

Having the capacity to make a Will:
To be of legal capacity to make a Will, you are required to know:
- WHO: Must be capable of understanding who is expected to benefit after your death.
- WHAT: Must be capable of understanding the nature and extend of your property.
- WHERE: Must understand the disposition of property you are making.
- WHY: Must understand that signing the document enacts this disposition.
- WHEN: Must understand this document will be effective at some point in the future when you pass away.