Consumer Will Provision Guidebook

A Practical Clause-by-Clause Companion to the National Make a Will Month White Paper

How this guidebook is intended to be used

- This is a reference guide, not a short article. Consumers might read one section at a time while reviewing a will.
- The guide is designed to help consumers recognize provisions that might appear in a will and identify questions to ask counsel.
- A provision that is useful for one family might be unnecessary or harmful for another.
- Many provisions discussed below might instead appear in a revocable trust if you have one.
- Consumers should not treat the guide as a substitute for legal advice in the state whose law governs the will.

Contents

Educational information only. This guide gives general information, not legal advice. The right plan depends on where you live, what you own, how your assets are titled, who your beneficiaries are, your family circumstances, and the laws that apply to you.

Introduction: Why a Will Provision Guide Might Help

A will can look deceptively simple. Some provisions are easy to understand, such as naming an executor or leaving a dollar amount to a charity. Other provisions can be technical, such as estate tax apportionment, fiduciary powers, powers of appointment, retirement account trust provisions, no contest clauses, and tax-sensitive marital trusts. Consumers often sign wills without understanding why language is included, why something has been omitted, or what questions the document should raise. This may create gaps in the consumer's planning that are not identified until an issue has already arisen and there are no ways to address the problem contemplated in their documents. These gaps may create costly situations where court intervention may be needed, liability created for the various family members involved or potential lawsuits filed, etc. The frustration and stress created by these kinds of situations should not be discounted, either.

This guide is intended to help a thoughtful consumer review a will more carefully and know what questions to ask. It is not a checklist of provisions that every will should contain. Instead, each section explains what a provision might do, when it might be appropriate, when it might not be necessary, common mistakes, personal considerations that might justify modifying the provision, and questions the consumer might ask the attorney. The aim is to make the consumer a better participant in the planning discussion, not to turn the consumer into a lawyer.

The guide is also intended to distinguish document preparation from planning. A document can be legally valid but still poorly matched to the family, assets, beneficiary needs, tax exposure, fiduciary realities, religious or cultural wishes, and practical administration issues. A will should be understandable enough that you can explain the basic plan, but thoughtful enough that it does not leave avoidable problems for loved ones and fiduciaries.

Part 1. Framework and Scope Provisions

Governing Law and Overall Planning Framework

What it might do	This provision might identify the state law intended to govern the will and explain how the will fits with the rest of the estate plan. If a revocable trust is used, the will might be a pour-over will that transfers any probate assets into that trust.
When it might be used	It might be used when you have moved, own property in more than one state, use a revocable trust, or want to be clear about which state law applies. It might also be used to make clear that a will is only one part of a larger plan.
When it might not be used	It might not require much elaboration in a very simple will for a long-time resident of one state with no trust and no multistate assets, although governing law still matters.

Common mistakes	A common mistake is signing a will in one state, moving, and never reviewing whether the plan still works. Another mistake is treating the will and revocable trust as separate documents that do not need to be coordinated. They generally should.
Personal considerations	A personal consideration might be privacy. If the will may become public through probate, you might prefer to place more detailed dispositive provisions in a revocable trust, which would only become a public document if there was a lawsuit against the trust.
Questions to discuss	What law governs my will? Have I moved since signing it? Does the will coordinate with my trust, beneficiary designations, and asset titles?

Citizenship and Marital Deduction Planning

What it might do	This provision might state citizenship because citizenship can affect estate tax marital deduction planning for a surviving spouse.
When it might be used	It might be used when a married couple could have estate tax exposure or when one spouse is not a U.S. citizen.
When it might not be used	It might not be significant for a smaller estate where both spouses are U.S. citizens and there is no estate tax issue, though citizenship still may be recorded for clarity.
Common mistakes	A common mistake is assuming a noncitizen spouse can always receive the same tax treatment as a citizen spouse. Another mistake is ignoring citizenship because the estate is not currently taxable, even though wealth or law may change.
Personal considerations	A personal consideration might be a spouse who is a permanent resident but not a citizen, or a couple who has international assets or family abroad.
Questions to discuss	Does the will assume the spouse is a U.S. citizen? If not, has marital deduction planning been reviewed?

Intentional Omission or Disinheritance

What it might do	A will might state that a person was intentionally omitted or that no general disinheritance is intended except as specifically provided.
When it might be used	It might be used when someone who might expect to inherit is receiving nothing or less than others.

When it might not be used	It might not be used if the omission is obvious and counsel believes extra language would inflame conflict or reveal unnecessary family history.
Common mistakes	A common mistake is using harsh language in stating that an heir is being intentionally left out. That increases anger and litigation risk. Depending on your state's law, leaving a child out of a will without addressing the omission can create questions about whether it was intentional and may affect that child's rights.
Personal considerations	A personal consideration might be estrangement, addiction, prior lifetime gifts, special needs planning, or the desire to avoid embarrassing family members in a public probate document.
Questions to discuss	Should anyone be expressly mentioned as omitted? Would a small gift, trust, letter of explanation, or no contest clause be better than direct disinheritance language?

Part 2. Property Disposition Provisions

Personal Tangible Property

What it might do	This provision might dispose of household contents, furniture, jewelry, art, vehicles, collections, firearms (but watch state law restrictions on transfer), tools, religious objects, and sentimental items.
When it might be used	It might be used whenever personal property has financial or emotional value or where family members may disagree.
When it might not be used	It might not need much detail if you own few personal items of value and beneficiaries get along well, though even modest items can create conflict.
Common mistakes	A common mistake is assuming that beneficiaries will be reasonable about sentimental items. Another is using an informal list that may not be legally effective under state law.
Personal considerations	A personal consideration might be a family heirloom, jewelry with emotional meaning, collections, firearms, pets, or cultural or religious objects.
Questions to discuss	Does my state permit a binding personal property memorandum? Which items matter more emotionally than financially? Who should decide if people disagree?

Letter of Instruction for Tangible Property

What it might do	A letter of instruction might provide nonbinding guidance about personal property, family history, information about where passwords and other digital-access instructions are safely stored, contacts, burial wishes, values, or practical details.
When it might be used	It might be used when you want to explain preferences without putting every detail into the will.
When it might not be used	It might not be useful if it conflicts with the will, is not updated, or is treated as a legal document when state law does not make it binding.
Common mistakes	A common mistake is creating a letter that contradicts the will. Another is failing to tell the executor where the letter is kept. Not clearly dating when the letter was created and leaving multiple versions of the letter can create ambiguity and confusion, especially if there are contradictory terms in different versions.
Personal considerations	A personal consideration might be wanting to explain why one child receives a sentimental item or why a charity or religious institution matters.
Questions to discuss	Is the letter consistent with the will? Is it dated? Does the executor know where it is?

Highly Valuable Tangible Items

What it might do	A will might specifically address valuable art, jewelry, collectibles, vehicles, family business equipment, firearms, or other significant tangible assets.
When it might be used	It might be used when the item has high value, is insured separately, may need appraisal, or is intended for a specific person.
When it might not be used	It might not be needed if the item will be sold and proceeds divided, or if it is already owned by a trust, LLC, or other entity.
Common mistakes	A common mistake is gifting an item in the will when the item is titled elsewhere or already belongs to a trust or entity. Another is failing to allocate tax, appraisal, shipping, or insurance costs.
Personal considerations	A personal consideration might be whether a beneficiary wants the item, can maintain it, can insure it, or will resent receiving it if it creates costs.
Questions to discuss	Who receives the item? Who bears tax or expenses? Is the item insured and correctly titled?

Real Property

What it might do	A will might dispose of a primary residence, vacation home, rental property, farm, land, or other real estate not otherwise transferred.
When it might be used	It might be used when real estate remains individually owned and should pass under the will or into a testamentary trust.
When it might not be used	It might not be the best tool if the property is already jointly owned, in a revocable trust, in an LLC, or subject to a deed that transfers it at death.
Common mistakes	A common mistake is assuming a will controls property that already passes by survivorship or deed. Another is failing to address mortgages, insurance, taxes, repairs, and sale authority.
Personal considerations	A personal consideration might be whether the family wants to keep a vacation home, whether one child lives there, or whether sale would be emotionally difficult but financially necessary.
Questions to discuss	Who owns the property now? Should it be sold, retained, rented, or held in trust? Who pays expenses?

Residence Use for a Beneficiary

What it might do	A provision might allow a spouse, child, disabled beneficiary, partner, caregiver, or other person to live in a residence after death.
When it might be used	It might be used when housing stability is a central goal or when a beneficiary cannot easily relocate.
When it might not be used	It might not be used if the estate lacks liquidity to maintain the home or if the arrangement would unfairly burden other beneficiaries. If the beneficiary has special needs or receives government benefits, talk with a special-needs attorney before setting up the housing arrangement because it could affect eligibility for certain benefits.
Common mistakes	A common mistake is giving a residence right to a beneficiary without determining who pays mortgage, taxes, insurance, utilities, repairs, and maintenance. Another is failing to say when the right ends.
Personal considerations	A personal consideration might be a special needs child, surviving spouse, elderly sibling, unmarried partner, or adult child who has lived in the home.
Questions to discuss	How long can the person stay? Who pays expenses? Can the fiduciary sell or substitute another residence?

Real Property Subject to Debt

What it might do	A provision might state whether real estate passes subject to mortgage or whether estate assets should pay debt first.
When it might be used	It might be used whenever property is mortgaged or secured by debt.
When it might not be used	It might not require a special clause if the default rule under state law and your wishes align, but that should be confirmed.
Common mistakes	A common mistake is paying off a mortgage for one beneficiary with residue that otherwise would have been shared by all beneficiaries.
Personal considerations	A personal consideration might be whether the recipient can afford carrying costs or whether you want to equalize among beneficiaries.
Questions to discuss	Should debt follow the property or be paid from the estate? Would one choice change the intended fairness of the plan?

Specific Cash Gifts

What it might do	A will might make specific dollar gifts to relatives, friends, caregivers, employees, charities, religious institutions, or others.
When it might be used	It might be used to remember someone before the residue passes to primary beneficiaries or to make charitable or values-based gifts.
When it might not be used	It might not be used if liquidity is uncertain or if many dollar gifts would complicate administration.
Common mistakes	A common mistake is making dollar gifts without considering whether the estate may shrink. Another is failing to say what happens if the recipient dies first.
Personal considerations	A personal consideration might be a caregiver, long-time employee, sibling, housekeeper, charity, church, synagogue, mosque, school, or community institution.
Questions to discuss	Can the estate afford the gift? Should it be reduced by lifetime payments? Who receives the gift if the named person is deceased?

Advancements Against Cash Gifts

What it might do	A provision might reduce a later gift if the beneficiary received an intended advance during life.
When it might be used	It might be used when lifetime gifts are likely and you want to avoid duplication.
When it might not be used	It might not be useful if lifetime gifts are intended to be extra and not deducted from inheritance.
Common mistakes	A common mistake is failing to document whether a lifetime payment was a gift, loan, or advancement.
Personal considerations	A personal consideration might be helping one child buy a home or paying one beneficiary's expenses while wanting future shares to remain fair.
Questions to discuss	How must an advancement be documented? Does the recipient need to acknowledge it in writing?

Residuary Clause

What it might do	The residue clause might dispose of everything not specifically given away. In a pour-over will, it might transfer the residue to a revocable trust.
When it might be used	It is almost always central because assets change and many items will not be specifically listed.
When it might not be used	It might be simple if all residue passes outright to one beneficiary, but it should not be omitted.
Common mistakes	A common mistake is failing to include a complete residuary clause, causing partial intestacy. Another is forgetting to update residue beneficiaries after a death or divorce.
Personal considerations	A personal consideration might be whether residue should pass outright, in trust, to spouse, descendants, charities, or a blend.
Questions to discuss	Where does everything else go? If a beneficiary dies first, who receives that share?

Takers of Last Resort

What it might do	This provision might identify who inherits if all named beneficiaries and descendants are gone.

When it might be used	It might be used to avoid state intestacy rules and direct assets to extended family, charities, or causes.
When it might not be used	It might not be lengthy if you are comfortable with default heirs, but many people are~~do~~ not.
Common mistakes	A common mistake is failing to define extended family clearly or naming outdated charities.
Personal considerations	A personal consideration might be whether distant relatives, a faith institution, alma mater, medical charity, or community organization should inherit.
Questions to discuss	If everyone named is gone, who should receive the estate?

Part 3. Fiduciary and Administrative Provisions

Executor Appointment

What it might do	The will names the executor who will administer the probate estate.
When it might be used	Most wills name a preferred executor so there is a clear person to handle the probate estate, although the court ultimately appoints the executor under state law.
When it might not be used	It might not be wise to name a person merely because of age, birth order, proximity, or family politics.
Common mistakes	A common mistake is naming all children to avoid hurt feelings, creating delay or deadlock. Another is failing to name backups.
Personal considerations	A personal consideration might be whether the person has time, health, judgment, neutrality, and financial organization.
Questions to discuss	Who should serve? Who are backups? Should a professional fiduciary be used?

Family Executors and Family Friction

What it might do	A will might name family members as executors, sometimes one at a time or sometimes together.
When it might be used	It might be used when family members are trustworthy, capable, and likely to work together.

When it might not be used	It might not be used if naming a family member would intensify conflict or burden someone already overwhelmed.
Common mistakes	A common mistake is using fiduciary appointments to signal love or equality rather than matching the role to skills.
Personal considerations	A personal consideration might be sibling rivalry, blended family tensions, special needs, geographic distance, or resentment over compensation.
Questions to discuss	Will this appointment help administration or create conflict?

Institutional or Professional Fiduciaries

What it might do	A bank, trust company, professional fiduciary, attorney, CPA, or other professional might serve as executor, trustee, or co-fiduciary.
When it might be used	It might be used for complex assets, family conflict, special needs beneficiaries, long-term trusts, or lack of suitable family fiduciaries.
When it might not be used	It might not be practical for small estates if fees, minimums, or institutional policies are disproportionate.
Common mistakes	A common mistake is naming an institution without confirming willingness, minimum fees, and ability to handle the assets involved.
Personal considerations	A personal consideration might be whether family members would prefer neutrality or resent an outsider.
Questions to discuss	Will the institution serve? What are its fees and minimums? How does it handle real estate, tangible property, and discretionary distributions?

Fiduciary Compensation

What it might do	A will might permit, waive, limit, or modify executor or trustee compensation.
When it might be used	It might be used to clarify whether family fiduciaries may be paid and whether institutions follow their fee schedules.
When it might not be used	It might not need customization when state law default compensation is acceptable.

Common mistakes	A common mistake is assuming family members will serve without compensation or that other beneficiaries will not object to commissions.
Personal considerations	A personal consideration might be whether one child will do substantial work while others inherit equally.
Questions to discuss	Should family fiduciaries be paid? Should compensation be explained to beneficiaries? Is it fair to the individual named as a fiduciary if they serve without compensation?

Authority to Appoint Successor or Co-Fiduciary

What it might do	A provision might allow an acting fiduciary, spouse, protector, or beneficiaries to appoint a successor or co-fiduciary.
When it might be used	It might be used to provide flexibility if named fiduciaries become unavailable or need help.
When it might not be used	It might not be wise if the appointer could choose someone other beneficiaries distrust.
Common mistakes	A common mistake is giving broad appointment power without limits on who can be appointed.
Personal considerations	A personal consideration might be whether a fiduciary might need professional help, or whether family politics make appointments sensitive.
Questions to discuss	Who may appoint a successor? Are there limits? Should beneficiaries receive notice?

Self-Dealing

What it might do	A fiduciary self-dealing provision might prohibit or permit certain transactions involving the fiduciary personally or related trusts.
When it might be used	It might be used where family property, businesses, loans, or trust-to-trust transactions may be needed.
When it might not be used	It might not be used broadly if conflict risk is high or beneficiaries need strong protection.
Common mistakes	A common mistake is either prohibiting all transactions that may be practically necessary or permitting too much without safeguards.

Personal considerations	A personal consideration might be a family home one trust owns and another beneficiary uses, or a family business transaction involving fiduciaries.
Questions to discuss	Should self-dealing require independent approval, appraisal, disclosure, or beneficiary consent?

Duty to Diversify

What it might do	A will might waive or modify the fiduciary's duty to diversify investments.
When it might be used	It might be used where you want a fiduciary to retain a business, real estate, concentrated stock, farm, or special asset.
When it might not be used	It might not be used if you want conventional prudent diversification and reduced investment concentration risk.
Common mistakes	A common mistake is waiving diversification without giving guidance on when sale might still be appropriate.
Personal considerations	A personal consideration might be emotional attachment to a business or home versus the financial risk of concentration.
Questions to discuss	Should the fiduciary be allowed to retain specific concentrated assets? For how long? Under what standards?

Funeral Agent and Final Arrangements

What it might do	A will may state your wishes for funeral, burial, cremation, religious rites, organ donation, autopsy, or disposition of your remains. Depending on state law, a separate document may be needed to give someone legal authority to make those decisions.
When it might be used	It might be used when final arrangements matter religiously, culturally, emotionally, or practically.
When it might not be used	It might not belong solely in the will if the will may not be found until after funeral decisions are needed.
Common mistakes	A common mistake is placing detailed funeral wishes only in a will that no one reads until too late.

Personal considerations	A personal consideration might be religious burial requirements, cremation preferences, military honors, cemetery plots, organ donation, or family disagreement.
Questions to discuss	Who has legal authority? Where are instructions kept? Do health care documents and funeral documents coordinate?

No Contest Clause

What it might do	A no contest clause might penalize a beneficiary who contests the will or trust.
When it might be used	It might be used where litigation risk is significant and you want deterrence.
When it might not be used	It might not be useful if the challenger receives nothing, because there may be no gift to forfeit. Enforceability also varies by state.
Common mistakes	A common mistake is assuming the clause prevents all litigation. Another is imposing a severe penalty on a vulnerable beneficiary who depends on trust support.
Personal considerations	A personal consideration might be whether deterrence is worth the potential harm to a beneficiary with special needs or dependency.
Questions to discuss	Is the clause enforceable under state law? Should good-faith claims be carved out?

Part 4. Tax and Marital Planning Provisions

Estate Tax Apportionment

What it might do	This clause might decide whether estate taxes are paid from residue, charged to beneficiaries, or allocated another way. Even if you are not subject to federal estate tax, a state estate or inheritance tax may apply.
When it might be used	It might be used whenever taxes could be material or when specific gifts should or should not bear tax.
When it might not be used	It might not need complex customization if the estate is far below estate tax thresholds and no state estate tax applies, but review is still prudent.
Common mistakes	A common mistake is protecting specific gifts from tax without realizing residuary beneficiaries bear the cost.

Personal considerations	A personal consideration might be a valuable home passing to one child while tax is paid by shares intended for all children.
Questions to discuss	Who should bear taxes? Does the answer match the fairness of the overall plan?

Portability and DSUE Directions

What it might do	The will might allow or direct the executor to file a federal estate tax return to preserve any of the deceased spouse's unused federal estate-tax exemption for the surviving spouse. This is called a portability election and often goes by the acronym DSUE (Deceased Spouse's Unused Exemption).
When it might be used	It might be used for married couples where federal estate tax exposure may exist now or later. Portability can sometimes let a surviving spouse use the part of the deceased spouse's federal estate-tax exemption that was not used. To preserve it, the estate generally must file a federal estate tax return on time, although IRS relief may sometimes be available.
When it might not be used	It might not be needed if there is clearly no tax exposure and filing cost outweighs benefit, though future law and asset growth should be considered.
Common mistakes	A common mistake is missing the filing deadline or assuming portability solves state estate tax or GST issues.
Personal considerations	A personal consideration might be a surviving spouse who may inherit more assets, remarry, or experience significant asset growth.
Questions to discuss	Should the executor be required or authorized to file? Who pays the cost?

Credit Shelter or Family Trust

What it might do	This trust might hold assets after the first spouse's death for the surviving spouse and descendants, often to preserve tax benefits and asset protection.
When it might be used	It might be used where estate tax, state estate tax, creditor protection, remarriage risk, or blended family concerns exist.
When it might not be used	It might not be necessary for a smaller, uncomplicated estate where outright transfer to the surviving spouse is adequate and tax risk is remote.

Common mistakes	A common mistake is assuming portability replaces all reasons to use a credit shelter trust. Another is failing to fund or administer the trust properly.
Personal considerations	A personal consideration might be protecting children from a prior marriage or ensuring assets are not redirected after the first death.
Questions to discuss	Should assets pass outright to the spouse or in trust? Who controls distributions?

Marital or QTIP Trust

What it might do	A marital or QTIP trust might qualify for the marital deduction while preserving control over ultimate remainder beneficiaries.
When it might be used	It might be used for tax deferral, blended families, second marriages, creditor protection, or support of a surviving spouse. Assets left in a QTIP trust are generally counted as part of the surviving spouse's estate for federal estate-tax purposes. Those assets may also receive an adjustment to their income-tax basis (often called a "basis step up" but it could also potentially decease basis if the value of an asset had went down at the time of death) when the surviving spouse dies, which can reduce future capital-gains tax but does not always eliminate it.
When it might not be used	It might not be needed if all assets can pass outright to a spouse without tax or family concerns.
Common mistakes	A common mistake is not understanding the spouse's income rights and the tax election requirements.
Personal considerations	A personal consideration might be balancing love and support for a surviving spouse with protection for children from a prior relationship.
Questions to discuss	What rights does the spouse have? Who serves as trustee? Who receives remaining assets later?

Disclaimer-Based Planning

What it might do	A plan might allow the surviving spouse or beneficiary to disclaim (renounce) assets after death so they pass into an alternate trust.
When it might be used	It might be used to keep documents simpler while preserving flexibility.

When it might not be used	It might not be wise if the survivor may not understand, act timely, or be emotionally ready to make technical tax decisions.
Common mistakes	A common mistake is relying on a disclaimer when the survivor has already accepted benefits or missed deadlines. If you think a deadline was missed or the survivor has already accepted benefits, get professional advice promptly. Whether a disclaimer is still possible depends on the facts and the law that applies.
Personal considerations	A personal consideration might be whether the spouse is capable, organized, and willing to take action soon after death.
Questions to discuss	Would automatic trust funding be safer than relying on a disclaimer?

Community Property Assumptions

What it might do	A will might be drafted based on assumptions about whether assets are separate or community property.
When it might be used	It might be used or reviewed when you lived in or moved from a community property state.
When it might not be used	It might not be relevant for those who have never lived in a community property state and have no such assets.
Common mistakes	A common mistake is ignoring community property history after a move.
Personal considerations	A personal consideration might be marriage history, relocation, or assets acquired while living in another state.
Questions to discuss	Could any assets be community property? Has counsel reviewed basis and ownership consequences?

Part 5. Trusts for Spouses, Children, and Other Heirs

Separate Trusts for Descendants

What it might do	A will might create separate continuing trusts for children or descendants instead of outright distributions.

When it might be used	It might be used for asset protection, divorce protection, creditor risk, tax flexibility, immaturity, disability, addiction risk, or stewardship goals.
When it might not be used	It might not be necessary if beneficiaries are mature, risks are low, assets are modest, and added administration would be burdensome.
Common mistakes	A common mistake is terminating trusts at young ages without considering divorce, lawsuits, substance abuse, tax changes, or beneficiary vulnerability.
Personal considerations	A personal consideration might be a child in a risky profession, unstable marriage, poor spending habits, or a beneficiary who would benefit from coaching rather than unrestricted access.
Questions to discuss	Should assets stay in trust for life, until an age, or until milestones? Who should be trustee?

HEMS Standard

What it might do	A HEMS standard might limit distributions to health, education, maintenance, and support, especially when a beneficiary acts as trustee of the beneficiary's own trust.
When it might be used	It might be used to balance access with estate tax and creditor protection objectives. If a beneficiary is also serving as trustee, the trust may limit what that person can distribute to himself or herself to an "ascertainable standard," i.e. health, education, maintenance, and support (HEMS). This can help preserve tax and asset-protection goals, but the result depends on state law and the exact trust language.
When it might not be used	It might not provide enough flexibility for unusual needs unless an independent trustee has broader powers.
Common mistakes	A common mistake is assuming HEMS covers every desirable distribution. Another is failing to say who decides disputed needs.
Personal considerations	A personal consideration might be whether a beneficiary needs broader support for entrepreneurship, caregiving, special medical needs, religious education, or family support.
Questions to discuss	Is HEMS sufficient? Should an independent trustee have broader discretion?

Ability to Favor a Beneficiary

What it might do	A trustee might be permitted to favor one beneficiary over others rather than making equal distributions.
When it might be used	It might be used where needs differ among beneficiaries or where fairness does not mean equality.
When it might not be used	It might not be appropriate if you want strict equality or if discretion would likely create conflict.
Common mistakes	A common mistake is granting broad discretion without guidance, leading beneficiaries to perceive favoritism.
Personal considerations	A personal consideration might be one child with illness, disability, caregiving responsibility, lower resources, or greater educational needs.
Questions to discuss	Should the trustee equalize or respond to need? Should you create a letter to explain your philosophy and provide the trustee with guidance?

Powers of Appointment

What it might do	A power of appointment might allow a spouse, beneficiary, or other person to redirect trust assets among permitted appointees. Powers of appointment can be broad or narrow, with different tax implications depending on how broad the power is. They should be written to match your goals, including who should be allowed to receive the assets and how much flexibility you want to give the person holding the power.
When it might be used	It might be used to provide flexibility for tax law changes, family changes, special needs, births, deaths, or changed relationships.
When it might not be used	It might not be used if you want fixed distributions and no later redirection. As one example, if you have a blended family and wish for children of each of you and your spouse to receive specific amounts, you may not wish to provide a power of appointment to the surviving spouse which would permit them to change the percentages each child receives.
Common mistakes	A common mistake is making the power too broad, allowing assets to pass to a new spouse or unintended people.
Personal considerations	A personal consideration might be whether the surviving spouse should have flexibility but not the ability to disinherit your children.

Questions to discuss	Who can exercise the power? In favor of whom? During life or at death? What are the estate and asset protection implications?

Special Needs Provisions

What it might do	A will or trust might include supplemental needs language for a beneficiary who receives or might receive government benefits.
When it might be used	It might be used for known disability, possible future disability, long-term trusts, or vulnerable beneficiaries.
When it might not be used	It might not be enough by itself if benefits planning is complex; special needs counsel might be needed.
Common mistakes	A common mistake is leaving assets outright to a beneficiary receiving means-tested benefits. Another is naming a trustee unfamiliar with benefits rules.
Personal considerations	A personal consideration might be a child, grandchild, spouse, sibling, or other beneficiary with disability, chronic illness, mental health issues, or eligibility for benefits.
Questions to discuss	Should special needs counsel review the clause? Are beneficiary designations coordinated?

Trust Protector

What it might do	A trust protector might have powers to remove and replace trustees, change situs, address administrative issues, or adapt certain provisions.
When it might be used	It might be used for long-term trusts, institutional trustees, special needs planning, tax uncertainty, or family governance.
When it might not be used	It might not be needed for very short-term or simple trusts where added roles would create confusion or cost.
Common mistakes	A common mistake is naming a protector but not defining powers, duties, succession, compensation, or fiduciary status. Be certain that state law permits the powers you grant. Also be careful that the term “protector” may be used in a variety of roles and provided with different powers depending on the lawyer preparing the document.
Personal considerations	A personal consideration might be concern that an institutional trustee could merge, change personnel, or become unsuitable over time.

Questions to discuss	Who should be protector? What powers should the protector have? Is the protector a fiduciary?

Trust Protector Fiduciary Duty

What it might do	The document might state whether a trust protector acts as a fiduciary and owes duties such as loyalty and care.
When it might be used	It might be used when the protector has meaningful powers affecting trustees, beneficiaries, or administration.
When it might not be used	It might not be desirable for every power if flexibility is more important and state law permits a nonfiduciary role.
Common mistakes	A common mistake is failing to specify fiduciary status, leaving uncertainty about accountability.
Personal considerations	A personal consideration might be whether beneficiaries need protection from misuse of protector powers.
Questions to discuss	Should the protector be accountable as a fiduciary? Who can remove the protector?

Beneficiary Excluded From Fiduciary Roles

What it might do	A document might prevent a particular beneficiary from serving as executor, trustee, or other fiduciary.
When it might be used	It might be used when service could jeopardize benefits, create conflict, create tax issues, or exceed the beneficiary's capacity.
When it might not be used	It might not be appropriate if the exclusion is punitive rather than protective or if a limited role would work.
Common mistakes	A common mistake is excluding a beneficiary without considering the emotional effect or explaining the reason in a separate private letter.
Personal considerations	A personal consideration might be disability, addiction, creditor issues, sibling conflict, or a history of poor financial judgment.

Questions to discuss	Should the exclusion be explicit? Should a private explanation be prepared?

Part 6. Retirement Assets and Tax-Sensitive Trust Planning

Retirement Plan and IRA Provisions

What it might do	A will or trust might include provisions for retirement accounts payable to trusts.
When it might be used	It might be used when retirement accounts are large or beneficiaries need protection.
When it might not be used	It might not be ideal if outright beneficiary designations provide better tax results and beneficiaries can handle assets responsibly.
Common mistakes	A common mistake is naming a trust as beneficiary without first confirming that the trust language and beneficiary form work with the special tax and distribution rules that apply to retirement accounts.
Personal considerations	A personal consideration might be whether a beneficiary is a minor, spouse, disabled, vulnerable, or in a high-risk marriage.
Questions to discuss	Who is named on beneficiary forms? Does the trust language match the retirement account plan?

Conduit Trust Treatment

What it might do	A conduit trust might require that whenever retirement distributions are received by the trust those distributions are passed out to the beneficiary.
When it might be used	It might be used to simplify tax treatment or qualify for certain payout treatment while using a trust.
When it might not be used	It might not be appropriate if the goal is strong asset protection because distributions leave the trust.
Common mistakes	A common mistake is using conduit treatment for a beneficiary who should not receive mandatory distributions from required minimum distributions.
Personal considerations	A personal consideration might be a mature beneficiary versus a beneficiary with creditor, divorce, spending, or disability concerns.

Questions to discuss	Will required payouts undermine protection?

Accumulation Trust Treatment

What it might do	An accumulation trust might allow retirement distributions to remain inside the trust.
When it might be used	It might be used for stronger control, asset protection, special needs planning, or vulnerable beneficiaries.
When it might not be used	It might not be ideal if retained income would create high income tax costs and protection is not needed.
Common mistakes	A common mistake is using accumulation treatment for all beneficiaries without comparing tax cost and protection need.
Personal considerations	A personal consideration might be using accumulation only for a special needs or vulnerable beneficiary while using different designations for others.
Questions to discuss	Should accumulation apply to all beneficiaries or only some? How will tax costs be managed?

Part 7. Funding and Coordination Issues

Initial Funding and Trust Operation

What it might do	If you use a revocable trust, the assets that are supposed to be controlled by the trust generally need to be properly transferred or titled to it during your lifetime. Otherwise, the trust may not work as intended for protection during your incapacity, or probate avoidance.
When it might be used	It might be used to make the trust operational and familiar to financial institutions.
When it might not be used	It might not apply if no revocable trust is used.
Common mistakes	A common mistake is signing a trust but never funding it.
Personal considerations	A personal consideration might be whether disability planning is a major reason for the trust, making lifetime funding more important.
Questions to discuss	What assets are actually in the trust?

Transferring Non-Retirement Assets to the Revocable Trust

What it might do	Appropriate non-retirement assets, such as certain bank accounts, brokerage accounts, real estate, business interests, etc., may be transferred to a revocable trust. Assets properly owned by the trust can usually be managed by a successor trustee during incapacity and can often avoid probate.
When it might be used	It might be used for bank accounts, brokerage accounts, real estate, business interests, and other non-retirement assets.
When it might not be used	It might not be appropriate if transfer causes tax, mortgage, insurance, title, liability, or administrative problems.
Common mistakes	A common mistake is retitling some assets but not others, leaving a fragmented plan.
Personal considerations	A personal consideration might be simplifying accounts for aging, illness, or successor trustee administration.
Questions to discuss	Which assets should be retitled and which should not?

LLC Ownership for Homes or Other Assets

What it might do	Real estate or other assets might be placed in a limited liability company (LLC), with the will or trust disposing of LLC interests.
When it might be used	It might be used for rental property, liability management, administrative convenience, or multistate planning.
When it might not be used	It might not be worthwhile if added costs, mortgage issues, insurance changes, or complexity outweigh benefits.
Common mistakes	A common mistake is transferring property without lender, insurance, tax, or title review.
Personal considerations	A personal consideration might be a vacation home shared among children or rental property with liability concerns.
Questions to discuss	Does the LLC solve a real problem? Who manages it?

Coordination With Insurance

What it might do	The estate plan might require insurance review when ownership, beneficiaries, trusts, LLCs, or fiduciaries change.
When it might be used	It might be used whenever valuable property, real estate, trusts, LLCs, or life insurance are involved.
When it might not be used	It might not require extensive work for very modest assets, but beneficiary and ownership checks remain important.
Common mistakes	A common mistake is transferring property to a trust or LLC without updating named insureds or scheduled coverage, potentially causing a gap in protection as the insurance company may deny a claim if the insurance does not properly reflect the insured.
Personal considerations	A personal consideration might be jewelry, art, firearms, homes, umbrella liability, or life insurance intended to fund trusts.
Questions to discuss	Do policies match ownership and beneficiary designations?

Part 8. Public Record, Privacy, and Document Coordination

A will admitted to probate might become part of the public record. This might be acceptable for a simple plan, but some people might prefer to place more detailed family, beneficiary, or dispositive provisions in a revocable trust. Privacy is not absolute, but planning can reduce unnecessary disclosure.

If a will and revocable trust are both used, they should be reviewed together. A common mistake is updating one document and not the other. Another common problem is having tangible property, cash gifts, tax clauses, fiduciary appointments, or beneficiary definitions that do not match. Consumers might ask counsel for a short roadmap explaining which document controls which assets and decisions.

Appendix A. Consumer Review Checklist

- Does the will identify the governing law and coordinate with any revocable trust?
- Does the executor appointment still make practical sense?
- Are successors named, willing, capable, and appropriate?
- Are personal property, sentimental items, and valuable collectibles addressed?
- Are real estate, debt, residence use, and carrying costs addressed?
- Does the residuary clause dispose of everything not otherwise gifted?
- Are default beneficiaries named if all primary beneficiaries are gone?
- Are trusts used where outright gifts might expose beneficiaries to divorce, creditors, addiction, disability, or other risks?
- Are special needs provisions included or reviewed if any beneficiary might receive benefits?
- Are retirement account beneficiary designations coordinated with the will and any trusts?

- Are tax apportionment, portability, marital trust, and credit shelter provisions understood?
- Are powers of appointment, trustee powers, trust protectors, and fiduciary compensation understood?
- Does any no contest clause fit the family circumstances and state law?
- Are insurance policies, account titles, and beneficiary designations consistent with the plan?
- Has the will been reviewed after marriage, divorce, birth, death, disability, relocation, tax law changes, or major asset changes?

Appendix B. A Practical Way to Mark Up Your Own Will for Attorney Review- Do NOT Mark up Original Signed Wills in this Manner

- Highlight every person named in the will and ask whether that person is still appropriate for the role or gift.
- Circle every fiduciary title, such as executor, trustee, guardian, trust protector, or agent, and confirm you understand the job.
- Underline every asset-specific clause, such as real estate, tangible property, cash gifts, or business interests.
- Put a question mark next to every tax clause, power of appointment, no contest clause, or trustee power you do not understand.
- Make a separate list of assets that will not pass under the will, such as retirement accounts, life insurance, joint accounts, POD/TOD accounts, and assets in trust.
- Bring the marked document and asset list to counsel rather than trying to revise legal language yourself.

Annotating your will should only be done with a copy of the document. If you were to mark your original signed will, a court may perceive that as you “defacing” your current will and causing it to be voided. That would create a gap in time where you have no will at all.

Closing Thought

A consumer does not need to understand every technical word in a will at the level of an estate planning lawyer. But a consumer should understand the basic purpose of the major provisions, the family and financial problems the provisions are meant to address, and the tradeoffs involved. The most useful question is often not, “Is this provision standard?” The better question might be, “Why is this provision appropriate for me and my family?” Estate planning is one of those areas where families often do not know what they do not know. Use this guide to help you ask better questions, then work with a qualified estate-planning attorney to make sure your will and other documents fit your family, assets, and goals.