



Wills and Estates Fact Sheet

Introduction

A will allows you to give your things to who you want and does not leave that decision to a judge. Even if you do not have much property, you may have special items or money you would like to pass on to your loved ones or charities. A will also helps avoid family disagreements. Many families struggle over who should get what.

If you have children, it is helpful to a judge or your family to know who you want to have custody of your children. While the court makes the final decision, you can make your wishes known through a will.

Finally, if you have special funeral arrangements, or if you want to identify where your property is located, you need a will.

Validity

Anyone can make a will, as long as they are at least 18 years old and of sound mind. This means that a court or other agency has not declared you incompetent and that you have the legal ability to understand your choices. Your will can be challenged if someone feels you were not of sound mind when you made it. In addition to being made by someone 18 or older and of sound mind, the following conditions must be met:

- it must be in writing (oral wills are not valid)
- the person making the will must sign it
- if typed, the will needs two or more witnesses who cannot inherit anything from the will

Handwritten wills are valid, but the entire will must be in your own handwriting. You must also sign it. If your handwritten will is challenged, three witnesses must testify that the will is in your handwriting. You should not have any witness sign your handwritten will. It should be entirely in your handwriting.

Needing an Attorney

If you have a small estate, you may be able to make your own will. You just need to know what you own and who you want to leave it to. However, you should speak to an attorney if you have a lot of property, especially real estate, valuables, and investments (such as stocks and

bonds). Carefully consider the total value of your property, including life insurance. Poor planning could result in you losing some assets to estate taxes.

Always seek the advice and help of an attorney if you think your will is likely to be contested by any family member, or if you think someone other than whom you wish may try to get custody of your children.

Executors, Children, and Guardians

Executors

This is a person who you trust to carry out what you want done. They must have the ability and time to carry out the terms of your will. It can be an attorney or a bank. Once you decide who to name as executor, discuss this decision with them to see if they are willing to take on this responsibility. It is best to choose someone who will not inherit anything from you. It is also a good idea to have a second choice in case the executor dies before you.

Children

No one is required to leave anything to their children, but you must name any children who you wish to leave nothing to. You must make it clear that the child or children are to inherit nothing. If you do not, the child may have a reason to challenge the will. This is often called "taking against the will." The law also protects surviving spouses from being left out, as long as they were married at least one year.

Guardians

A guardian is someone you want to appoint to take care of your child. If the other parent is able, they have priority in custody considerations. A court will consider your wishes, but it has the final say.

Annuities, Life Insurance Policies, and Retirement Plans

Your will cannot specify the beneficiaries of life insurance policies, retirement plans, or annuities. You decide those beneficiaries by filling out the proper forms with the relevant companies. It is wise to regularly review such plans to make sure they are set up according to your wishes.



Having Your Will Challenged

Wills are rarely challenged. When they are contested, it is usually by a family member who feels left out or cheated. To get a will completely invalidated, one must go to court and prove the will not valid. It could be claimed that your signature was forged or that you were not of sound mind. Other possible claims could be that you were unduly influenced by someone or that there was some other serious problem. If an attested will is challenged, its witnesses must testify about what they know.

Storing Your Will

Choose a safe place where someone can find it when you die. Someone you trust, usually the executor, should know how to find it. It does not have to be recorded or filed in court, but it can be deposited with a probate court for safekeeping. Do not keep your will in a safe deposit box—sometimes hard for others to get access to these.

Probating Your Will

This is filing a case in court to prove a will's validity or to get the court's help with carrying it out. The will is filed with the clerk of the court in the county in which the maker of the will lived. It is accompanied by a petition for the court to approve the will and appoint the executor. The court will determine the will's validity. None of this is necessary if the will can be carried out without the court's help. If the will includes real estate in a county other than where the deceased lived, then a copy must be filed there as well.

Changing Your Will

Do this with something called a codicil (see "Glossary"). You can also revoke a previous will by writing a new one and clearly stating that the new one reflects your wishes. You can also revoke your will by intentionally burning, tearing, or destroying it and making sure to destroy all copies to eliminate any confusion.

Glossary

- **codicil** ['kah-'duh-sill]: a written change to a person's will; it must be dated, signed, and witnessed, just as a will would be; it must reference

the previous will; a codicil can add to or subtract from the terms of the original will. Keep it with the original will

- **estate**: all that you own; this includes real estate, personal property, and other assets
- **executor**: the person appointed to manage a dead person's estate; unless there is a valid objection, the judge will appoint the person named in the will to be executor
- **guardian**: a person who will take care of your minor child if the child's other parent is unable
- **holographic will**: a handwritten will that is written, dated, and signed by the person making the will
- **incapacity**: the lack of ability to understand one's actions
- **intestate** [in-'tes-tit]: a person who dies without leaving a valid will or a way of dying by which the person who dies does not leave a valid will
- **probate**: the process of proving a will's validity and then carrying it out
- **testator** ['tes-ta-der]: a person who has written a will

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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