

Estate Planning

Seven out of ten Americans die without a will. Many of these people believed wills were not necessary unless they had large estates. This misconception often has led to unsatisfactory distributions of property after a person's death. Far too often relatives are extremely disappointed when they discover they will not receive the heirloom that Grandma, who died *intestate* (without a will), had promised them. With a will, even if some relatives are upset because Grandma did not leave them anything, at least they know she desired it that way.

This fact sheet answers some common questions about wills in Maryland. It does not qualify you to write your own will.

What is a Will?

A will is a document written according to governing state law. In this document, a person states how he or she wants his or her property handled and distributed after his or her death. A person's property is either real property or personal property. Real property is real estate, land and anything of a permanent nature under or over the land, including houses and other structures. Personal property is any other kind of property, including money. A person's real and personal property makes up his or her estate.

What Are the Advantages of a Will?

A will allows you to select who receives your property

If you die without a will, the laws of intestate succession determine who receives your property. This distribution of property may differ entirely from your wishes. The laws of intestate succession are not flexible. They allow the son who has worked the family farm for years to get no more than the son who is a financially successful doctor. The physically handicapped daughter receives the same as the daughter who has excellent health. Having a will allows you to determine who should get what property after your death and in what amount.

A will allows you to manage your estate

Shrewd estate planning techniques may be used in wills to avoid most taxes that otherwise would be due by the estate and your beneficiaries. The marital

deduction for Federal Estate and Gift Tax purposes now is unlimited. Wills frequently can lower inheritance and estate taxes or can establish trusts benefiting your surviving spouse and children. Trusts can save taxes as well as provide a type of financial management by deterring imprudent spending.

A will allows you to name a personal representative

As *testator*, you can name a personal representative who will carry out (execute) your wishes. Often, the named personal representative is a trusted family friend who is particularly aware of your desires and family needs. If estate administration will be relatively complicated, it may be a good idea to name an expert estate manager. However, the option is open to name the trusted friend and the expert estate manager as copersonal representatives. Remember you should always select a personal representative who is 1) capable of serving, 2) willing to serve and 3) knowledgeable about your business and family affairs. Also, you should consider naming an alternate personal representative to serve.

If you do not have a will, or in a will do not name a personal representative, the court will appoint someone. This person also is referred to as a personal representative. State laws require that certain persons be given preference when the court decides on this appointment.

The personal representative is entitled to a commission. However, a will may specify or limit the amount of the commission for the personal representative named in the will. If the court names the personal representative, then the court determines the amount of the commission.

Your personal representative must file a bond with the court for the protection of your beneficiaries. In your will, you may direct that the personal representative not be required to file a bond; however, the court still has the authority to require one. A court-appointed personal representative must post a bond, even when the estate is insignificant in value. The amount of the bond usually is determined by the estimated value of the estate.

A will allows you to name a guardian for minors

Parents usually wish to provide a guardian for their children who are minors. This guardian will serve if both parents die. Of course, the naming of a guardian

is subject to court approval. State law allows for the appointment of two guardians. One person may be appointed as guardian of the child's estate, while the other is guardian of the person or has custody of the child. This guardian is responsible for the nurture and education of the child. You should be extremely careful when considering and selecting your child's guardian.

What Happens if I Die Without a Will?

A surviving spouse is entitled to receive a one-time, \$2,000 allowance from the estate and an additional allowance of \$1,000 for each unmarried child under the age of 18 immediately upon the spouse's death. If the estate's assets are sufficient, the personal representative may agree to advance additional funds from the heir's share.

If you do not leave a will, your property will be distributed according to the state's intestate succession laws. The following chart, in part, illustrates these laws. If you are not satisfied with the way your property will be distributed under state law, then you should make a will.

Can the State Control My Will?

Yes. State law has imposed some restrictions on the distribution of your property as stated in your will.

Surviving spouse's share

Unless you were divorced or signed a valid waiver in a property settlement, your surviving spouse can choose to take a share of the estate instead of the property left by your will. He or she may elect to take:

- a one-third share of the net estate, instead of the property left by your will, if you have surviving issue (all your descendants, of whatever relation); or
- a one-half share of the net estate if there are no surviving issue.

Joint tenancy property

Property owned by you and another person as "joint tenants with rights of survivorship" automatically passes to the surviving joint tenant(s) when you die. The will does not affect the property, although they are subject to estate taxes.

Life insurance

When a life insurance settlement is payable to a beneficiary other than your estate, the proceeds are payable directly to the beneficiary and do not pass through your estate, though they are subject to estate taxes. The will cannot affect this distribution.

Children omitted from the will

If you do not provide for any children born or adopted *after* the execution of your will and do provide for other children and if the omitted children are not specifically excluded, the omitted children **may** receive their intestate share if they survive you.

Distribution of Property in Absence of a Will

Surviving Relative	Property Distribution
spouse	half to spouse
minor children	half to children, equally
no parents	
spouse	\$15,000 plus half of remaining estate
no minor children	
adult children	remaining half of estate
no parents	
spouse	\$15,000 plus half of remaining estate
no children	
parents	remaining half of estate
no spouse	
children	all children share, equally
no parents	
spouse	all to spouse
no children	
no parents	
no spouse	
no children	
parents	all to parents, equally
no spouse	
no children	
no parents	
siblings	all to siblings or their descendants, equally
no spouse	
no children	
no parents	
no siblings	
grandparents	all to grandparents and their issue, equally
great-grandparents or their issue	all, equally
no blood relatives	
step-children	all, equally
no living relatives	all to county Board of Education

What Are the Different Types of Wills?

There are two basic types of wills: *formal* (witnessed) and *holographic*.

A formal will is one that is signed by the testator before two competent witnesses who sign an attestation clause. In the attestation clause, the witnesses agree that the will is valid and duly executed. Though not needed for the will to be valid, this clause is extremely valuable for improving the will's validity. However, two witnesses must sign the will whether or not there is an attestation clause. The person(s) submitting the will to probate court, to prove it is genuine, also must show it was duly executed. The attestation clause will prevent the witnesses from testifying that the will is not valid.

A holographic will is defined as a will written entirely by the testator with his or her own hand and not witnessed (attested). However, a handwritten will is legal in Maryland if it is attested and signed by two or more creditable witnesses in the presence of the testator.

In addition to Maryland, many states refuse to recognize an unwitnessed will. However, a holographic will may be admitted to probate court in a state that does not allow such wills, if the will was executed in a state where holographic wills are valid.

How Do I Prepare a Will?

A carefully drafted will assures you that your lifetime accumulation of goods, property and savings will pass to those you wish to receive them. This gives you the consolation of knowing that all has been done, within the confines of the law, to direct who will inherit your property after your death.

Even though wills can be written and executed by laypersons in some states, it is much safer to consult an attorney. The attorney can use legal language to achieve your intentions. Also, the attorney understands the technical requirements for making a will valid and executing it.

Before you go to your attorney, follow these steps.

1. Name your personal representative and an alternate in case that person cannot or will not serve.
2. Decide who will be your beneficiaries, those who will receive your property.
3. Decide what you want each beneficiary to receive.
4. Determine how to dispose of your business or professional practice.
5. Determine the timing of property transfers: immediately, over a period of time or in the future.
6. Decide whether property should be transferred outright or held in trust.
7. Consider leaving bequests in percentages instead of dollars.
8. List all of your property, how it is owned and its approximate values.

9. Prepare a balance sheet for the attorney that states your current financial situation.
10. Prepare a rough draft of your will to review and discuss with trusted friends and family members.
11. When completely satisfied with your decisions, have an attorney prepare the final draft of the will and execute it.

Formal requirements of a will

Here are five basic requirements for a valid will:

1. The testator must be of sound mind.
2. The testator must be at least 18 years old.
3. The testator must sign his or her will at its logical end.
4. The testator must not be acting fraudulently or under undue influence.
5. The will must be witnessed by two competent witnesses.

When Should I Change My Will?

You should periodically review your will and make any changes to make the will fit present conditions. There are many reasons you may wish to review, revise or revoke your will. Your reasoning may be based on changes in your life that include:

Changes in family relations

- Marriage
- Divorce
- Death of a spouse
- Birth, death, marriage, divorce, adoption or illness of a child, or other relative
- Change in attitudes toward or relationships with children

Changes in economic conditions

- Change in wealth accumulation
- Change in employment
- Retirement
- Change in business interests, expansion, new partnerships or corporations

Changes in law and personal conditions

- Change in the probate law
- Change in state and Federal tax laws
- Change in residence to a different state
- Purchase of property in a different state
- Death of a personal representative, trustee or guardian
- Death of a beneficiary or change in attitude toward a beneficiary
- Change in attitude or conditions of a beneficiary
- Change in health of testator or spouse

Changes may be made by making a new will and stating that all prior wills are revoked. Or, changes may be made by adding to or deleting certain portions of your will with a *codicil*. A codicil is a written statement that expands, modifies or revokes a will, and it must be executed formally in the same manner as a will (with two witnesses). Do not write a will thinking you can amend it. All your writing does is invalidate your will.

Revoking Your Will

Wills are revoked only the following three ways:

1. By writing a will or codicil that declares an intention to revoke the will and executing it in the manner required of a will (two witnesses are required).
2. By cutting, tearing, burning, obliterating, cancelling or destroying the will or the signature with the intent to revoke.
3. By subsequent marriage or divorce of the person who made the will, unless the will expressly provides otherwise, but this is *only* to the provisions concerning the spouse.

Where Do I Keep My Will?

Generally speaking, everyone needs a will. The original will should be sent to the County Register of Wills office. It is usually a good idea to keep an unsigned copy of the will in a safe-deposit box or similarly safe place. Mention to your attorney, personal representative or trusted friend where the will is located. The will should be revised periodically.

Glossary

Administrator . A court appointed representative for your estate who will carry out your will's instructions.

Attestation clause. A clause affirming truth or genuineness; authenticated by signing as a witness.

Beneficiary. The person designated to receive proceeds or benefits as of a trust, estate or life insurance.

Bond. A sum of money held to guarantee performance of a contract or obligation.

Codicil. A legal instrument made subsequently to a will and modifying it.

Decedent. A deceased person.

Elect. To choose, especially by preference.

Estate. A person's property, the assets and liabilities, left by a person at death.

Execute. To carry out fully.

Formal will. One that is witnessed before a notary public and satisfies the formal requirements of a will.

Holographic will. A totally handwritten will.

Intestate. To die without making a valid will.

Issue. All of a person's descendants, whatever their relation.

Joint tenant. Person with whom you share property.

Personal representative. An individual or corporation nominated in a will and appointed by a court to settle the estate of the testator.

Probate. The action or process of proving before a judicial authority that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine.

Testator. A person who leaves a will in force at his or her death.

Estate Planning: Writing Wills in Maryland

Prepared by
Mary J. Stephenson
family resource management specialist
Family and Consumer Sciences

Adapted for Maryland residents from "Writing Wills In Kentucky." Shirley A. Cunningham, Jr., Helen Stevens and Charles L. Moore, Sr., Cooperative Extension Service, University of Kentucky.

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