



Wills

What is a will?

A will is perhaps the most important legal document the average person will ever sign. It is an instrument that, upon your death, controls who gets your property, who will be the guardian of your children and who will manage your estate.

What happens if you die without a will?

If you do not make a will, state laws will determine who gets your property. This process is called “intestate succession.” In most states your property will first be divided among your spouse and children. If you are not married and have no children, then your property will be distributed to your next of kin. If the courts cannot find your next of kin, then the property goes to the state.

Is my out-of-state will valid if I move?

If a will was validly made while you were living in another state, it is probably valid in your new state. However, if your will was not “self-proved,” it may not be accepted by certain courts until the witnesses sign an oath swearing that they saw you sign your will. Because of the expenses involved in finding your witnesses, it is probably best to rewrite your will after moving to another state.

Most states allow a will to be self-proved. The EstateGuidanceSM will contains a self-proving affidavit so that, were you to move to another state, the will would likely be valid without the expense of tracking down witnesses.

What makes a will legal?

There are only a couple of requirements to make a will valid and legal:

Soundness of Mind: The person signing the will cannot be mentally ill or disabled and must be acting of his or her own free will, without undue influence from others.

Witnesses: At least two people (three in some states) must watch you sign the will. They cannot be related to you and cannot be entitled to receive anything under the will.

In addition to these provisions, the law also requires that a will's appearance be uniform: all important sections must be entirely typewritten or computer generated, or they must be entirely handwritten. You do not have to get your will notarized. However, EstateGuidance allows you to “self-prove” the will, which requires that a separate affidavit be notarized. The advantage of self-proving is that witnesses do not have to be tracked down after your death.

Can I make a handwritten will?

A handwritten will is called a “holographic will.” It is valid in about 25 states so long as all material provisions and clauses are entirely handwritten. However, because most handwritten wills are not as in-depth as the EstateGuidance will and because they are oftentimes not properly written, we do not recommend them. The court can be unusually strict in determining whether a holographic will is authentic. More importantly, we do not recommend that people *revise* their wills by hand.

**Do I have to file my will with a court or in public records?**

You do not have to file your will with a court or other governmental authority immediately after you sign it. Upon probate, however, the will must be filed with the court and will become public.

Can I disinherit someone?

You can leave anyone out of your will without a problem, unless it is your spouse or your child. Many laws have been enacted to protect spouses and minor children. Be sure to read the section “Marriage, Divorce and Children” in the “Guide to Last Wills” for more information.

If you wish to disinherit one of your children or give one child less than another, you should clearly state that intention in your will and the reasons why. The law has special protections for minor children. For instance, they are protected from the loss of the family home. You cannot give your home to someone else if your child will have to move from the home.

What should I do with my will after I sign it?

After you sign your will, you should keep it in a safe place that is easily accessible. Be sure that the person you appointed as your personal representative knows where you placed your will. You do not have to file it with the court or public records. However, depending on how busy and crowded they are, some courts may store your will.

Can I change or revoke my will after I make it?

You can revoke a will any time before death by making a new will, which states that all prior wills are no longer valid. To revoke a will without making a new one, all you have to do is intentionally tear it up, deface it, burn it or destroy it. If this is done accidentally, then the will is not revoked.

What happens if you make a new will (which revokes all prior wills) and then decide that you like your old will better? You need to make a whole new will that replaces the new one and mimics the old one. The old will is invalid and cannot be revived after it has been revoked.

One way to make changes to a will is to make a codicil, which is an amendment to a will. However, a codicil must be signed and witnessed just like a will, so it is usually easier just to make a new will.

Be sure not to make changes to your will after it has been witnessed and signed. If you cross out a person's name or add a clause to a will that has already been signed, you risk making the whole will invalid.

What happens to my debts after I die?

The general rule is that all debts must first be paid before assets are distributed. Your outstanding credit card balances, for instance, will be paid before any money or gifts are distributed to your heirs.

A major exception to this general rule is for “secured debts,” such as home loans or auto loans. In the case of secured debts, property can be distributed with its debt. In other words, let's say you have a car worth \$10,000 and have a loan on the car of \$5,000. You can leave the car to someone, but it will be that person's obligation to pay off the loan.



What happens if you owe more than you own? In general, people cannot inherit another person's debts. If there are not enough assets to pay your debts, then all property will be sold to pay as much of the debt as possible, and no one will inherit anything.

Where can I get my will notarized?

You can usually find a notary at Mail Boxes, Etc. and similar stores. Financial institutions such as banks also offer notary services. The Yellow Pages has lists of traveling notaries.

Please be advised that the notary will only be signing the "Self-Proving Affidavit" and the "Statement of Interment." These documents should not be stapled to your Last Will; they are separate documents. The Last Will itself does not have to be notarized.