

WILLS

Function of a will

A will 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.

Consequence of Death Without a Will

If you die without a will (known as "intestate"), the state, and not you, will decide how your property is to be distributed. In many states, your property will be distributed as follows:

First, all of your joint property will pass to your spouse (if you have one).

Second, your separate property will pass according to these rules:

- If you have a spouse, your spouse receives:
- All of your property if you leave no children, parents, siblings, nieces or nephews
- Half of your property if you leave one child or one or more parents, siblings, nieces or nephews
- One-third of your property if you leave two or more children
- All property not given to a spouse is distributed to the following persons, in this order:
- Your children
- Your parents
- Your brothers and sisters, or, if they are not living, their children
- Your grandparents, or, if they are not living, their children (i.e. your uncles and aunts)
- Children of your deceased spouse
- Relatives of your deceased spouse
- The State of your legal residence

Requirement for a Valid Will

There are only a few 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.

Effectiveness of a Handwritten Will

A handwritten will, also called a "holographic will" could be valid so long as all material provisions and clauses are entirely handwritten. 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.

Where to Keep My Will

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.

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.

Changes or Revocation of an Existing Will

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.

If you make a new will, it will revoke all prior wills. The only way to preserve an old will is 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.

Who Pays for 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. For example, you have a house worth \$250,000 and have a mortgage on the house of \$150,000. You can leave the house to someone, but it will be that person's obligation to pay off the mortgage.

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.