



THE WILL

Creating a will is a crucial part of your estate plan. A will, or testament, is a legal document in which you articulate the rights of others over your property or family after your death. Without a will, the state will determine who receives your assets and how these assets will be taxed.

If you don't engage in estate planning and your will is unclear, your assets may get tied up in probate—the court-supervised process of administering and proving a will. Probate can be expensive and time-consuming. (Several factors can affect the length of probate, including the size and complexity of the estate, challenges to the will or its provisions, creditor claims against the estate, state probate laws, the state court system, and tax issues.) Thus, it is important to organize your estate and update your will to ensure that your exact desires are carried out quickly and without extra burden on your loved ones.

Wills can accomplish several aims:

Wills avoid intestacy. Intestacy is when the state dictates how your possessions will be distributed after your death. If you do not have a will, state intestate succession laws dictate the transfer of your belongings. The “intestate's will” generally allocates your property to your closest blood relatives in proportions that are dictated by law—but this distribution may not be what you would have wanted. Another disadvantage to allowing the state to handle your estate is the possibility that your estate will owe more taxes than it would have owed had you created a valid will.

Wills distribute property according to your wishes. Probably the greatest advantage of a will is that it allows you to choose who will get your property rather than leaving it up to state law. Wills allow you to leave bequests (gifts) to anyone you want. You can leave your property to a surviving spouse, a child, other relatives, friends, a trust, a charity, or anyone you choose. There are some limits, however, on how you can distribute property using a will. For instance, your spouse may have certain rights with respect to your property, regardless of the provisions of your will. Gifts through your will take the form of specific bequests (e.g., an heirloom, jewelry, furniture, or cash), general bequests (e.g., a percentage of your property), or a residuary bequest of what's left after your other gifts.

Wills allow you to nominate a guardian for your minor children. In many states, a will is your only means of stating whom you want to act as legal guardian for your minor children. You can name a personal guardian, who takes personal custody of the children, and a property guardian, who manages the children's assets. This can be the same person or different people. The probate court has final approval, but courts will usually approve your choice of guardian unless there are compelling reasons not to.

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The Will continued

Wills allow you to nominate an executor. A will allows you to designate a person as your executor to serve as your legal representative after your death. An executor carries out many estate settlement tasks, including locating your will, collecting your assets, paying legitimate creditor claims, paying taxes owed by your estate, and distributing any remaining assets to your beneficiaries. Like naming a guardian, the probate court has final approval but will usually approve whomever you nominate.

Wills specify how to pay estate taxes and other expenses. The way in which estate taxes and other expenses are divided among your heirs is generally determined by state law, unless you direct otherwise in your will. Your will gives you the chance to minimize taxes and other costs. For instance, if you draft a will that leaves your entire estate to your U.S. citizen spouse, none of your property will be taxable when you die (if your spouse survives you) because it is fully deductible under the unlimited marital deduction. In addition, you can provide in your will that these costs be paid from your residuary estate to ensure that the specific bequests you make to your beneficiaries are not reduced by taxes and other expenses. Or, you can specify which assets should be used or sold to pay these costs.

Wills can create a testamentary trust or a living trust. You can create a trust in your will, called a *testamentary trust*, that comes into being when your will is probated. Your will sets out the terms of the trust, such as who the trustee is, who the beneficiaries are, how the trust is funded, how the distributions should be made, and when the trust terminates. This can be especially important if you have a spouse or minor children who are unable to manage assets or property themselves. In addition, you can create a *living trust* during your lifetime and fund it after your death. If you have a living trust, your will can transfer assets that were not transferred to the trust while you were alive. This is known as a *pourover will* because the will “pours over” your estate to your living trust.

Will challenges in court

Although it doesn't happen often, the validity of your will can be challenged, usually by an unhappy beneficiary or a disinherited heir. Common claims include:

- You lacked testamentary capacity when you signed the will.
- You were unduly influenced by another individual when you drew up the will.
- The will was forged or was otherwise improperly executed.
- The will was revoked.

There are steps you can take to help minimize the possibility of your will being challenged in court. Talk to your attorney to find out what is the best course of action for you.

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