

# Will Planning Guide

Why planning a will can be  
an important step towards a  
secure future for your family...  
and for your own peace of mind.

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# Why do you need a will?

Think of what is most dear to you. Think of those who depend on you. Consider how hard you've worked to build a home and to accumulate assets that provide for your loved ones. A will assures that your wishes for what matters to you are carried out after you pass on.

Specifically, a will states how you want your estate distributed. It determines who will get your real estate, your investments, your savings, and your personal belongings. Your will can assign a guardian for your children and an executor to manage your estate. It is a legal document that, if done right, can give you control of how to best care for your best interests.

## Do you know what might happen if you die without a will?

- If you and your spouse die without a will, the court will appoint a guardian to raise your children.
- If you die without a will, the court appoints the person who will supervise the distribution of your property.
- If you die without a will, the court will divide your estate according to state law rather than your wishes.
- If you die without a will and no surviving relatives can be found, all your assets may go to the state.
- If you die without a will and have a partner with whom you are not married, that person most likely will not inherit your estate. Most states don't recognize unmarried partners, even if you've been in a committed relationship for years.

Your will is your wish and your word – backed by the power of law. Without a will, there’s no guarantee your wishes will be carried out or that family will be provided for as you intend.

Your will speaks for you when you no longer can. It can be a great comfort to the family members you leave behind because they don’t have to wonder or debate what your wishes were. Thanks to your will, they know exactly what you wanted. They can be more secure. You can have more peace of mind.

## How should you get started?

If you have decided to protect your assets with a will, congratulations! You are making sure that your estate will endure beyond your lifetime and meet your personal goals. Here are steps to help you prepare to make a will...

**Step One.** Determine what your estate consists of and its estimated value. Make a list of everything you own, including money, real estate, and personal property. (See “estate” in definitions.) You may want specific items to go to specific individuals, so it’s wise to create a comprehensive list.

**Step Two.** Decide what you want to do with your estate. Who will inherit your assets? Prepare a list of family members and other possible beneficiaries. Consider which property and how much you want to leave to the people in your life and/or the charitable institutions you support. To leave an inheritance to your children, look into creating a children’s trust that specifies at what age each child can receive the property. In your will, name a responsible person (trustee) to manage the trust property.

**Step Three.** Choose who you want to be the guardian of your children in the event there is no living parent. Be sure that person is willing and able to care for your children in the ways you desire.

**Step Four.** Decide who you want to be the executor of your estate. Name someone who will be diligent and conscientious about supervising the settlement of your estate. Discuss this job with the person you’ve chosen.

# Do you need a lawyer to make a valid will?

In most states, you must be at least 18 years of age and of “sound mind,” which simply means you understand what you are doing.

Some people may seek legal advice and hire a lawyer to write their will. Others may decide to “do-it-yourself” with information that can be found at the library, on the Internet, etc. It’s important to weigh the risks and rewards before you make your decision on how to proceed. Whether you hire a lawyer or do it yourself depends on your situation and how comfortable you feel with the process.

If you decide that a lawyer is right for you, be sure to discuss the legal fees upfront. The cost will depend on the size and complexity of your estate and how much time is spent in preparing your will. To choose a private lawyer, you can use your State Bar Association’s lawyer referral service. Or, you may belong to an organization, like AARP, the military, or a union, that offers free or low-cost legal services. Another option is to locate a legal clinic in your area.

# What is included in a will?

A will contains the following types of information...

## It identifies you:

- Your full legal name
- Address where you reside (primary residence)
- Your signature and date you signed
- Signatures of two witnesses (three in Vermont) who saw you sign the will and are not named as beneficiaries

## Describes your assets, including:

- Real estate
- Personal property (such as a coin collection, automobile, etc.)
- Money you have in savings (such as bank accounts) and investments (such as stock, mutual funds, IRA, etc.)

## States your wishes:

- Who you want as your beneficiaries (full names), including a spouse, children, other relatives, friends, or charities
- Who you want as alternate beneficiaries (full names), in case a beneficiary dies before or at the same time you do
- Who you want to act as the executor(s) to manage the estate (full names)
- Who you want to serve as guardian for minor children and alternate guardian in case your first choice is unable or unwilling to act as guardian (full names)
- Specific gifts you want to leave to specific individuals (such as engagement ring to your oldest granddaughter, etc.)
- Whether you want to establish any trust (for example, with direction for money you want to be used for the care of a person or pet)
- Whether you want to cancel debts that are owed to you

## More facts about wills you should consider...

- Certain kinds of property are automatically transferred upon your death. They are not given away by will and thereby avoid probate. For example, if you named a beneficiary for your life insurance policies and that person is living at the time of your death, the proceeds will be paid directly to that person.
- You may not be able to give away co-owned business property by will. Check the ownership agreement of any shared business to see what your rights are.
- You can't leave money or property to pets outright. In your will you can leave pets to someone you feel confident will take care of them or you may want to create a trust to do this for them.
- Some laws prohibit disinheritance of spouses or dependent children. A married person cannot completely disinherit a spouse without the spouse's consent.
- There are ways to avoid probate, such as a revocable living trust. You may want to discuss these options with a lawyer.
- You should consider a survivorship clause in your will to address what happens if a couple that left property to each other dies at or near the same time, such as in a fatal car accident. If, for example, the wife wants her property to go to her husband if he survives her but to her children from a prior marriage if he does not, she might name an alternate beneficiary. (Her property would go to the alternate beneficiary instead of her husband's estate.)
- Before you consider making an oral, electronic or video will, check your state laws to determine if such a will is valid.
- Have your will made in the state where you live. If it's valid in one state, it most likely is in all other states. However, since state laws differ, if you move to a different state, you should review it to make sure it complies with that state's laws.
- Make sure your will is written in clear language and neatly typed. Handwritten wills (called holographic wills) are legally valid in about 50% of the states.
- Store the will safely. Your lawyer can keep the original, and you can keep a copy in a fireproof metal box, file cabinet or home safe. A bank's safe deposit box may not be the best place because the bank may not be able to open a safe deposit box for someone other than the owner without a court order. Be sure your executor and someone else knows where your will can be found.

# When should you make a new will?

**You should review your will regularly and after a major life change. For example, a will may need to be updated if:**

- Your marital status changes
- You have or adopt additional children
- Your property situation changes significantly
- You move to a different state
- Any of your beneficiaries dies
- Your children's guardian or trustee cannot serve
- Your executor cannot serve
- Tax laws change significantly
- You change your mind about your wishes

If you update your will, destroy old wills and all copies of wills you made earlier to avoid the possibility that someone could challenge the latest document. Be sure to include a statement that you are revoking any previous wills.

## Where can you get further assistance?

1. To find the court in your state that handles probate affairs and estate administration, visit:  
<http://print.estate.findlaw.com/probate/probate-court-laws/state-probate-courts.html>. Select the link to your state.
2. For information about your state's laws, visit:  
<http://print.public.findlaw.com/library/state-laws.html>. Select from the list of legal topics, including probate laws and estate planning laws.
3. To reach your State Bar Association, visit:  
<http://print.public.findlaw.com/library/state-bar-associations.html>. Select the link to your state.
4. To reach the American Bar Association to seek legal help, visit: <http://abanet.org>.
5. To find a local attorney with estate-planning expertise, visit:  
<http://lawyers.findlaw.com> or <http://attorneypages.com>.

# What do these terms mean?

**Beneficiary:** A person or institution to which you choose to leave some or all of your estate.

**Codicil:** A written amendment to the terms of a will, made after the will has been witnessed and signed. It is typically used for simple changes made to a will.

**Estate:** Everything you own, including your personal belongings, real estate, savings, investments, life insurance, business interests, and employee benefits. Your estate may also be referred to as your “property.”

**Estate planning:** This refers to arranging for the transfer of your property after your death. It also refers to providing for minor children, saving on estate taxes (if any), and arranging for the handling of your personal and financial affairs if you become incapacitated.

**Executor/Executrix:** Person you name in your will to have legal responsibility for handling and distributing your property as your will directs. The executor also pays debts, taxes, and administration expenses through the estate. In some states, this person is called your “personal representative” or “administrator.”

**Guardian:** The adult you name to have custody of your children if you and the other parent die while your children are minors.

**Intestate:** To die without a will. In this case, a probate court will divide your property according to the laws of your state. The decisions made may be different from your wishes.

**Probate:** The legal process by which the court determines that your will is valid. During probate, the court ensures that the terms and conditions of the will are carried out in accordance with the laws of the state.

**Testator:** A person who has made a legally binding will or testament.

**Will:** Also called a testament, it is a legal document that gives specific instructions for how you would like your estate to be distributed after your death as well as other final wishes, such as naming a guardian for minor children.



### **Additional sources:**

- [www.nolo.com](http://www.nolo.com)
- [http://law.freeadvice.com/estate\\_planning/wills](http://law.freeadvice.com/estate_planning/wills)
- <http://www.estateplanninglinks.com>

### **References:**

- Quick & Legal Will Book, Nolo:  
Berkeley, CA, 2006
- <http://en.wikipedia.org>
- FindLaw for the Public. <http://public.findlaw.com>.

Because organizations can change names, addresses, phone numbers and web sites, in the future you may need to verify/update resource contact information with an online search.



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