

Estate Planning

Writing Wills in Maryland

Seven out of ten Americans die without a will. Many people believe wills are not necessary unless they have large estates. This misconception often leads 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 money or property that a parent or grandparent, who died *intestate* (without a will), had promised them. 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

Generally speaking, everyone needs a will. 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. (Consult with an attorney regarding federal and state estate taxes.) 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 unwise 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 orphan's court (referred to as court, hereafter) 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.

Subject to the consent of all interested parties or to court approval, the personal representative is entitled to a commission. A will may specify or limit the amount of the commission for the personal representative named in the will. However, the limit is not binding because the court can change it. If the court names the personal representative, then the court determines the maximum amount of the commission, without the approval of all interested parties.

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 except to secure payment of debts and Maryland inheritance taxes; however, the court still has the authority to require a bond for good cause shown. A court-appointed personal representative must post a bond, even when the estate is small in value, unless all interested persons waive the bond. 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. This guardian is responsible for the nurturing and education of the child. Be extremely careful when considering and selecting your child's guardian.

What Happens if I Die Without a Will?

Immediately upon your death, a surviving spouse is entitled to receive a one-time \$5,000 family allowance from the estate and an additional allowance of \$2,500 for each unmarried child under 18. 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

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	
stepchildren	all, equally
no living relatives	all to county Board of Education

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 the property is 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 the proceeds 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, the omitted children **may** receive their intestate share if they survive you and if they are not specifically excluded.

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, must also 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.

Many states, including Maryland, refuse to recognize a holographic (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 you have done everything, 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 that will achieve your intentions. Also, the attorney understands the technical requirements necessary for making a will valid and for 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 at a future time.
6. Decide whether property should be transferred outright or held in trust.
7. Consider leaving bequests in percentages instead of in dollars.
8. List all of your property, how it is owned, and its approximate values.
9. Prepare a balance sheet for the attorney, which 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 you are 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 dishonestly or under undue influence.
5. The will must be witnessed by two competent individuals.

When Should I Change My Will?

Review your will periodically and make any changes needed that will 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
- Expansion or other change of business interests, 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

Make changes by writing a new will and stating that all prior wills are revoked. Or, add to or delete 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).

Revoking your will

You can revoke your will in only the following three ways:

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

Where Do I Keep My Will?

Keep the original will in a fireproof repository such as a safe-deposit box. You can also keep your will on file with the County Register of Wills or, if you are a resident of Baltimore, with the Register of Wills, Baltimore City Office. Tell your attorney, personal representative, or trusted friend where the will is located. It is usually a good idea to keep an unsigned copy of the will in a safe place.

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 when the witness signs the will.

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

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

Codicil. A legal instrument created after a will and modifying it.

Decedent. A person who has died.

Elect. To choose, especially by preference.

Estate. A person's property—assets and liabilities—left by that individual 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 having made 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. In the case of an intestacy, the personal representative is always court appointed.

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.

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