



Common Questions About Wills

What is a will?

A will states what you want done with your property after you die. The people you leave things to are called your heirs. In your will, you name someone to make sure your wishes are carried out. That person is called a Personal Representative. If you do not name a Personal Representative, the Probate Court will name one for you.

What if I die without a will?

If you die without a will, there are state laws that say how your property is divided. It goes to your family in the order set by law.

Some people worry that the state will take their property if they die without a will. This is very rare. The state can take the property only if:

- You die with property in your name alone, and
- You have **no** living blood or adopted relatives



When *DO* I need a will?

You need a will if you want to:

- leave property to a friend or charity instead of family
- leave property to people who would not get anything under state laws about dividing property. There is [a table of MN heirship](#) on the MN attorney general website that shows the breakdown under state law.
- give certain items to certain people
- leave someone out who would inherit from you by state law
- divide your property unequally among heirs
- name a guardian of a minor child
- avoid fights between family members

When ***DON'T*** I need a will?

You don't need a will if:

- You have no real estate in your name only. Real estate you have is either jointly owned with rights of survivorship or as a life estate.
- You have real estate in your name only, but you have named one or more beneficiaries on it with a Transfer on Death Deed, which has been filed with the county recorder's office. See our fact sheet [Transfer on Death Deeds](#).
- You have beneficiaries named on your titled personal property, such as bank accounts and stocks.
- You have no real estate in your name only and your titled personal property (with no beneficiaries) totals \$75,000 or less. If so, family can use an affidavit to get title of the personal property into their name without probate.
- You want to leave your property to family in the order that the law says (see above). For example, if a widow with 2 children dies, the law gives each child one-half of her property. If she wants this, she does not need a will, but probate will probably still be needed.

Will my personal representative take care of things if I get too sick to do it myself?

No. A will takes effect only **after** you die. If you want someone to take care of things if you become disabled or incompetent, you need to name them in a Durable Power of Attorney and/or Health Care Directive.

See our fact sheets, [Health Care Directives](#) and [Powers of Attorney](#).

What if the only property I have has sentimental value but is not worth much money?

You need a will. Make a simple will and attach a list that says what property you have and who you want to get it. You can update your list as your personal property changes, even if you do not change your will.



Things like jewelry, family pictures, personal papers, tools, or furniture can have sentimental or other value, but don't have documents to show who owns them.

If you leave these items out of your will, they might go to a person you do not want to have them, or your heirs may not agree on who should get them. Sometimes sentimental property causes the biggest disagreements among family members.

You don't need a will if you give your property away before you die.

How do my heirs make sure my will is followed?

Your Personal Representative safeguards your property while they handle your bills. After the bills have been paid with your money, they give out your property to your heirs as stated in your will. They also make sure that life insurance and retirement benefits are paid. It is an important job. Check with the person you want to name as your Personal Representative to be sure they want to do it.

If your Personal Representative needs a court order to change title to your property or if there is a dispute about the will, they will file your will with the Probate Court.

What is Probate Court?

Probate Court decides whether wills are valid, rules on disputes about wills, and makes orders to change title to real estate, cars and other property with paper titles. If your will does not name a Personal Representative, the court will name one. If your estate is worth less than \$75,000 your will may not have to go through probate. See our fact sheet, [Questions About Probate](#).



Do I need a special form or a lawyer?

You can get a simple will form in office stores, on the internet or from a self-help book. These forms **may** work for you, but talk to a lawyer to be sure the form is right for your situation and follows state law. There are rules you have to follow to make the will legal.

Find more fact sheets at www.lawhelpmn.org/LASMfactsheets

Find your local legal aid office at www.lawhelpmn.org/resource/legal-aid-offices

*Fact Sheets are legal information NOT legal advice. See a lawyer for advice.
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