



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 names one for you. The Personal Representative is sometimes called the Executor.

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?

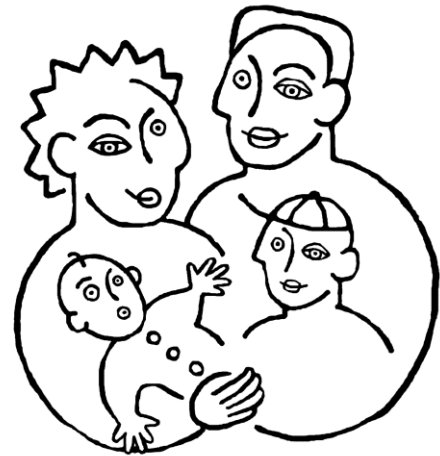
You need a will if you want to:

- 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 is probably still needed.



Does 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 file your will with the Probate Court.

What is Probate Court?

Probate Court decides if 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 to make my will?

You can get a simple will form in some office supply stores, online 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.

Does my will need to be notarized?

No, in Minnesota, you do not need to notarize your will to make it legal. But Minnesota lets you to make your will "self-proving." If you want to do that you need to go to a notary. A self-proving will helps prove that your will is valid if it is contested in court. It also speeds up probate because the court can accept it without contacting the witnesses who signed it.

Making Your Will Self-Proving

To make your will self-proving, you and your witnesses go to a notary and sign an affidavit that proves who you are and that each of you knew you were signing the will. Make sure you all have your picture IDs.

You need at least 2 witnesses. They must be:

- over 18 years old
- signing voluntarily
- of sound mind

A will can be made self-proved at any time.

Where do I keep my will?

A will does not have to be filed anywhere after it is written, but it's always best to make sure it can be found after you die. Make sure it is in a safe place. You can give it to your Personal Representative since this is a person you trust and is the person who makes sure your wishes are carried out. At least make sure your Personal Representative knows where to find it. If you keep it in a safe or bank safe deposit box, make sure they can access it.



In Minnesota, the probate court or court administrator's office keeps wills for people for free or for a small fee. You have the right to get your will back at any time.

If a lawyer helps you with your will, they may offer to hold it for you. If you do this, make sure your Personal Representative and/or family know that the lawyer has it.

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

Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.

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