



## Common Questions About Wills

### What is a will?

A will states what you want done with your property after you die. In your will, you also 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, and your estate needs to go through probate, the Probate Court names one for you. The Personal Representative is sometimes called the Executor. See our fact sheet [Questions About Probate](#).

### 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. Your spouse and your children are first. If you don't have a spouse or children, it goes to other family members.

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 are not married and have **no** living blood or adopted relatives



### When **DO** I need a will?

You need a will if you want to:

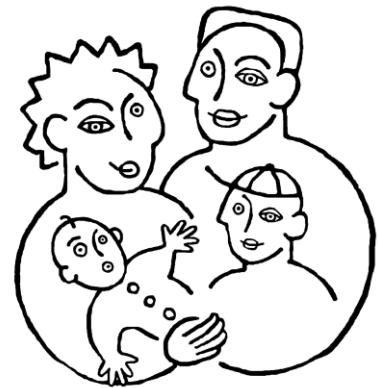
- leave property to a partner you are not married to
- leave property to a friend or charity instead of family
- leave more than half your property to your children from a previous marriage (if you are remarried)
- leave property to people who would not get anything, or would get less than you want them to, 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 if you are not married.

- 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 all of 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. See our fact sheet [Questions About 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 may still be 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 and a personal Representative is only appointed 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 so they can help with your finances. And a Health Care Directive so they can make health care decisions for you when you can't.

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 I 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 the people named 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. And make sure you trust them.

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. The most important rule is that 2 witnesses need to watch you sign your will. They need to sign too. If there are not 2 witnesses, your will is not valid. The witnesses should not be anyone named in your will and should not be family members. The witnesses must be:

- Over 18
- Signing voluntarily
- Of sound mind

## **Does my will need to be notarized?**

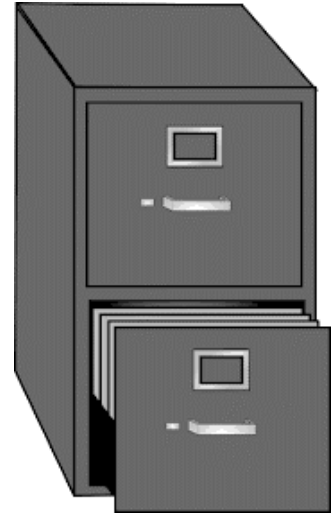
No, in Minnesota, you do not need to notarize your will to make it legal. But Minnesota lets you to make your will "self-proving." If you want to do that you need to go to a notary. A self-proving will helps prove that your will is valid if it is contested in court. It also speeds up probate because 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 you all 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. 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 signed and witnessed, 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. You can keep it in a filing cabinet at home. Don't keep it in a safe or bank safe deposit box unless you give your Personal Representative or someone else a way to access it after you are gone.



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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