



Common Questions About Wills

What is a will?

A will states what you want done with your money and 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 don't 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 money and 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 money and property if they die without a will. This is very rare. The state can take the money and property only if:

- You die with money and property in your name alone, and
- You are not married and have **no** living blood or adopted relatives
- You are enrolled in Minnesota Medical Assistance and the state wants to get back the money it spends on your care. This process is called "estate recovery." This can happen even if you have a valid will.



When **DO** I need a will?

You need a will if you want to:

- leave anything to a partner you are not married to
- leave anything to a friend or charity instead of family
- leave more than half your money and property to your children from a previous marriage (if you are remarried)

- leave anything 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 normally inherit from you by state law
- divide your money and 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 owned with one or more joint tenants, as a life estate, or in a trust.
- You have real estate in your name only, but you have named one or more beneficiaries on it with a Transfer on Death Deed (TODD). And the TODD is filed with the county recorder's office. See our fact sheet [Transfer on Death Deeds](#).
- You have beneficiaries named on all of your accounts, like bank accounts, stocks, and retirement accounts.
- These things are true:
 - You have no real estate in your name only and
 - your personal property and accounts (with no beneficiaries) totals \$75,000 or less and
 - you are ok having your property distributed according to the probate rules listed above.



If these things are true, family can use an affidavit to get title of accounts into their name without probate. See our fact sheet [Questions About Probate](#).

- You want to leave your money and property to family in the order that the law says ([table of MN heirship](#)). 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. Also name them in 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 if you want to make sure that specific things go to specific people. It's value doesn't matter. 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 don't 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 things away before you die. Even if you have a will, you can give your things away to anyone you want to before you die.

How do I make sure my will is followed?

Your Personal Representative protects your property while they handle your bills. After the bills have been paid with your money, they give out your money and 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.

Your Personal Representative files your will with the Probate Court if:

- they need a court order to change title to your property
- you have more than \$75,000 and didn't name beneficiaries
- there is a dispute about the will

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 that have paper titles.

If your will does not name a Personal Representative, the court names 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. You can also write up a will on your own without a form.

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?

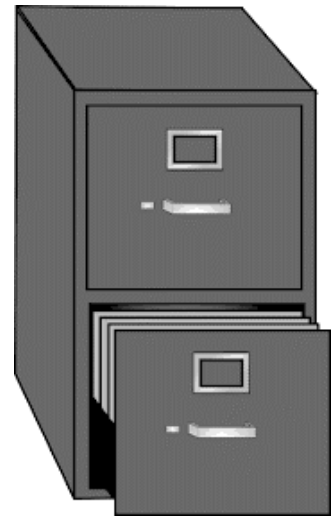
No, in Minnesota, you do not need to notarize your will to make it legal. But Minnesota lets you make your will "self-proving." If you want to do that you need to go to a notary. A self-proving will helps prove that your will is valid if it is contested in court. It also speeds up probate because the 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 need to go to a notary. 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 official after it is signed and witnessed, but 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, any court can safeguard your will for a [small fee](#) (*click link and scroll to bottom under Probate*). This is like putting it in a safe deposit box.

- The court has to keep the will confidential.
- During your lifetime, if your will is kept by the court, it can only be given to you or to a person you give permission to in writing to get it.
- A court-appointed guardian or conservator may be able to look at the will of a person who is under a guardianship or conservatorship.
- If you give your will to the court, the court releases it to interested parties when you die.

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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