Writing a Will

Frequently Asked Questions

Thinking about writing a will can be difficult enough, but actually going through with it is a different story. Here, a few commonly asked questions are answered to make this process a bit more bearable.

What happens if I die without a will?

If you don't make a will or use some other legal method to transfer your property when you die, state law will determine what happens to your property. Generally, it will go to your spouse and children or, if you have neither, to your other closest relatives. If no relatives can be found to inherit your property, it will go to the state.

In addition, in the absence of a will, a court will determine who will care for your young children and their property if the other parent is unavailable or unfit to do so.

If you are part of an unmarried same-sex couple, your surviving partner will not inherit anything unless you live in one of the few states that allows registered domestic partners to inherit like spouses: California, Connecticut, Maine, New Jersey, and Vermont.

I don't have much property. Can't I just make a handwritten will?

Handwritten, un-witnessed wills, called "holographic" wills, are legal in about 25 states. To be valid, a holographic will must be written and signed in the handwriting of the person making the will; in some states, it must also be dated. Some states allow you to use a fill-in-the-blanks form if the rest of the will is handwritten and the will is properly dated and signed.

A holographic will is better than nothing if it's valid in your state. But a will signed in front of witnesses is better. If a holographic will goes before a probate court, the court may be unusually strict when examining it to be sure it is legitimate. And if you don't have guidance—from a good self-help resource or a good lawyer—it's easy to write something that turns out to be ambiguous or even contrary to what you intended.

What makes a will legal? Do I need a lawyer to make my will?

Any adult of sound mind is entitled to make a will. Beyond that, there are just a few technical requirements a will must fulfill:

- The will must be signed by at least two witnesses. The witnesses must watch you sign the will, though they don't need to read it. Your witnesses, in most states, must be people who won't inherit anything under the will. (If your state allows "holographic" wills, you don't need witnesses.)
- You must date and sign the will.
- You do not have to have your will notarized. In many states, though, if you and your witnesses sign an affidavit (sworn statement) before a notary public, you can help simplify the court procedures required to prove the validity of the will after you die.
- You do not have to record or file your will with any government agency, although it can be recorded or filed in a few states. Just keep your will in a safe, accessible place and be sure the person in charge of winding up your affairs (your executor) knows where it is.

A lawyer does not have to write a will, and most people do not need a lawyer's help to make a basic will—one that leaves

Choosing an Executor

Selecting an executor is just as important as having a will. Executors will be in charge of many things, and will ultimately determine the speed and efficiency in which your heirs will receive their assets. Some of the duties may include:

- "Officially" opening the estate
- Taking a complete, accurate inventory of all things financially and emotionally valuable to the deceased person
- Using the estate's funds to pay any outstanding bills
- Temporarily running the deceased person's business until the heirs can inherit it
- Calculating and filing any outstanding tax returns for the deceased
- Working with the courts to "officially" close the estate, ensuring all debts have been handled on behalf of the deceased
- Distributing the assets as per the provisions of the will

As you can tell, there is much legal and financial understanding and knowledge required to fill this role. Keep in mind your executor may not necessarily be a family member. Sometimes the best person for the job might be the most capable and trustworthy person you know, not necessarily the most loved. Choose your executors wisely to ensure the smoothest execution of asset distribution.

Please flip for additional information

a home, investments, and personal items to your loved ones, and, if you have young children, that names a guardian to take care of them.

Creating a basic will rarely involves complicated legal rules, and most people can create their own will with the aid of a good software program or book. But if you have questions that aren't answered by the resource you're relying on, or your situation is unusual, it may be worth it to see a good lawyer.

Can I use my will to name a guardian to care for my young children and manage their property?

Yes. If both parents of a child die or become otherwise unable to care for a minor child, another adult—called a "personal guardian"—must step in. The personal guardian will be responsible for raising your children until they become legal adults. You and the child's other parent can use your wills to nominate someone to fill this position. To avert conflicts, you should both name the same person.

You can choose that same guardian to manage property that you leave to your minor children or you can name someone different. You can name a "property guardian," "custodian", or "trustee" to manage the property:

- Name a property guardian. You can simply name a property guardian to manage whatever property the child inherits, if there's no other mechanism (a trust, for example) to handle it. The guardian will manage the property until the child reaches the age of 18.
- Name a custodian under the Uniform Transfers to Minors Act (UTMA). In every state, except South Carolina and Vermont, you can choose a custodian to manage property you are leaving to a child. The custodian will step in to manage the property until the child reaches the age specified by your state's law—18 in a few states, 21 in most, and 25 in several others.
- Set up a trust for each child. You can use your will to create a trust for any property the child inherits and to name a trustee to handle the trust property until the child reaches the age you specify.
- Set up a "pot trust." If you have more than one child, you may want to set up just one trust for all of them. This arrangement is usually called a pot trust. You name a trustee to decide what each child needs and to spend money accordingly.

Must I leave something to my spouse and children?

Disinheriting spouses

The law protects surviving spouses from being left with nothing. If you live in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin—or Alaska if you have made a written community property agreement), your spouse automatically owns half of all the property and earnings (with a few exceptions) acquired by either of you during your marriage. You can leave your half of the community property, and your separate property, to anyone you choose.

In all other states, a surviving spouse has a legal right to claim a portion of your estate, no matter what your will provides. But these provisions kick in only if your spouse goes to court and claims that share.

If you don't plan to leave at least half of your property to your spouse, either through your will or outside it, you should consult a lawyer—unless your spouse willingly consents in writing to your plan.

Disinheriting children

Generally, it's perfectly legal to disinherit a child. If, however, it appears that you didn't mean to disinherit a child—the most common example is a child born after you made your will—then the child has the right to claim part of your property.

Can someone challenge my will after I die?

Very few wills are ever challenged in court. When they are, it's usually by a close relative who feels somehow cheated out of a share of the deceased person's property. To get an entire will invalidated, someone must go to court and prove that it suffers from a fatal flaw: the signature was forged, you weren't of sound mind when you made the will, or you were unduly influenced by someone.

If you have questions or need help making a will for yourself or your family, contact MHNet—help is available!

Source: http://www.nolo.com/legal-encyclopedia/wills-faq-29041.html