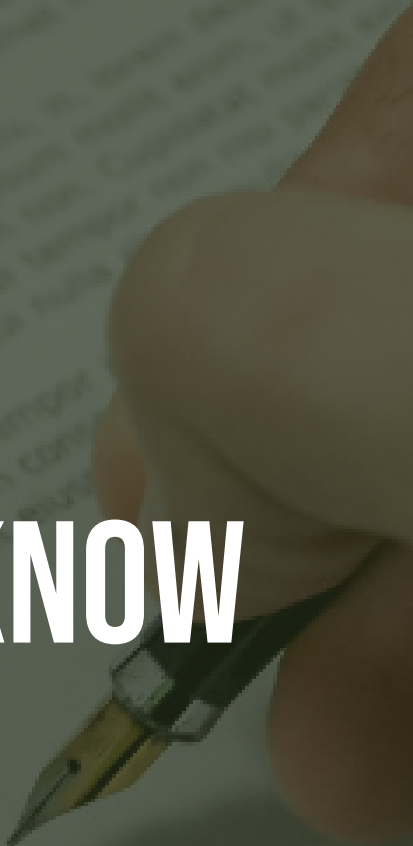




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# WHAT YOU SHOULD KNOW ABOUT WILLS

  
Signature



# WHY YOU NEED A WILL

**E**veryone should have a will. If you die without a will (or living trust), state intestacy law will determine who inherits your property. These rules are exactly the same for everybody who dies without a will, regardless of his or her circumstances.

In effect, when you die without a will, you let your state legislators write a will for you. Their choices may or may not match your desires. Chances are they won't. Most intestacy laws leave your entire estate to your surviving spouse and/or your children. If you have no spouse or children, your estate will probably go to your parents or siblings.

Here, for example, are just a few situations that intestacy laws are not designed to handle: you want to leave gifts to someone other than your spouse and children; you have children from a prior marriage; you want to leave your children unequal shares of your estate.


You need a will even if you think you have disposed of all your property through a living trust. Property can pass to your beneficiaries through your living trust only if you have transferred the property into the trust.

- You may forget or neglect to transfer some property to your trust.
- You may acquire property shortly before death and not have a chance to transfer it to your trust.
- Your estate may acquire property after you die. For example, you may have an inheritance that's tied up in probate until after your death, or you may be a party to a lawsuit that does not settle until after your death.

In these cases, without a will, the property will pass in accordance with your state's intestacy laws. With a will, it can pass into your living trust or to whomever you name as your residuary beneficiaries. They will take any property that your will doesn't otherwise dispose of.

Here are three more reasons why you need a will, even if you have a living trust:

- Some property is better disposed of by a will than a living trust. For example, motor vehicles are not typically transferred to a living trust because insurance companies hesitate to insure such vehicles.
- You may need to name a guardian for minor children. In most places, you can name a guardian only in a will.
- You may want to use a will to dispose of small ticket items if probate won't be required or will be inexpensive. If you've arranged to pass your big ticket items through a trust or other probate avoidance device, you may want to use a will to give away smaller value items, for example, grandpa's watch, or small cash gifts. These assets may not need to pass through probate or may qualify for simplified low-cost procedures.



*Most intestacy laws leave your entire estate to your surviving spouse and/or your children.*

## REQUIREMENTS FOR A LEGAL WILL

To ensure that your will is legal and can be admitted to probate, it should meet these minimum requirements.

### THE DOCUMENT

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Your will should:

- Be typed or printed.
- Contain at least one provision disposing of your property.
- Appoint an executor.
- Be dated.
- Be executed in accordance with the law, which in most places means it must be—
  - Signed by you in front of two witnesses who know you are signing your will.
  - Signed by the witnesses.

These are the bare minimum requirements. A number of additional provisions should be in any well-drafted will to ensure that your entire estate is disposed of as you wish and to minimize the likelihood of challenges and disputes. See Common Provisions Found in Well-Prepared Wills, below.



## THE WITNESSES

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The witnesses should be adults who are not also beneficiaries. Although they need to know they are witnessing your will, they don't need to read the will or know what is in it. The witnesses should pay close attention during the execution. If anyone later contests the validity of a will, the court may ask the witnesses to testify about what occurred during the signing.

## YOU, THE TESTATOR (PERSON MAKING THE WILL)

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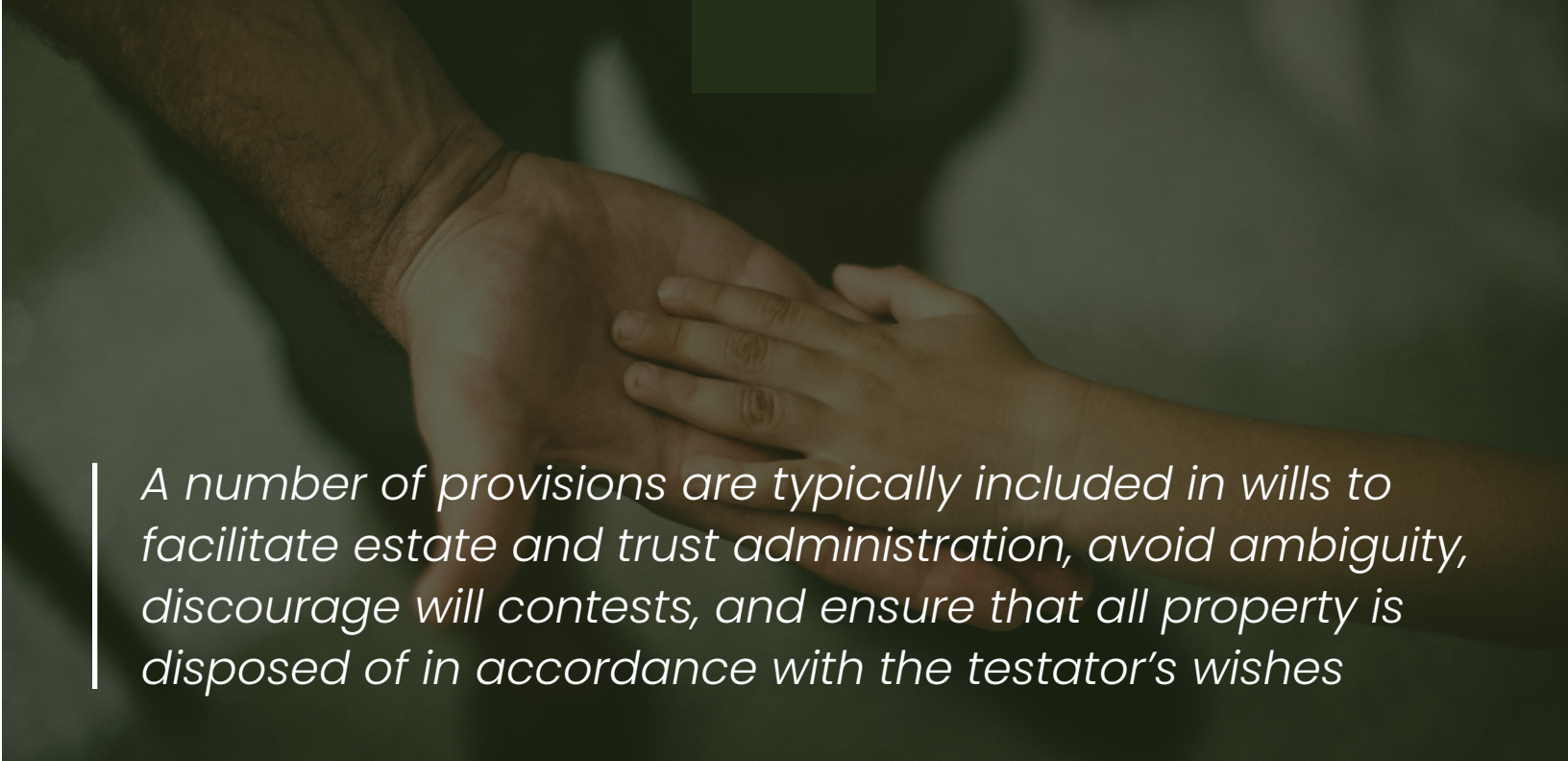
To make a valid will, you generally need to be over 18 and have "testamentary capacity." "Testamentary capacity" means you are mentally competent and requires that you understand:

- The purpose of a will.
- That you are making a will.
- The nature and extent of your property.
- Who are the natural recipients of your generosity (i.e., what persons, typically family members, an individual in your position would normally want to leave property to).

## SELF-PROVED WILLS

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Many places permit a self-proved will. A self-proved will contains a notarized affidavit signed by you and the witnesses. A self-proved will can be admitted to probate without testimony from a witness that the will is genuine.



*A number of provisions are typically included in wills to facilitate estate and trust administration, avoid ambiguity, discourage will contests, and ensure that all property is disposed of in accordance with the testator's wishes*

## COMMON PROVISIONS FOUND IN WELL-PREPARED WILLS


Other than satisfying the legal prerequisites so that it can be admitted to probate, a will doesn't have to be in any standard form. However, a number of provisions are typically included in wills to facilitate estate and trust administration, avoid ambiguity, discourage will contests, and ensure that all property is disposed of in accordance with the testator's wishes. Here are some of them.

**Introductory statement.** A will should begin with your name and a statement that the document is your will and that it revokes all prior wills and codicils. This statement shows your "testamentary intent" and makes clear that this will doesn't just amend a previous will. It completely supplants it.

**Dispositive provisions.** Here you set out what you want to happen to your property. There are many ways to make these gifts. For example, you can make a gift of a certain amount of money or particular item to a specific person. You can direct that property be sold and the proceeds be divided among beneficiaries. You can make gifts to be shared among classes of people, such as "my children," "my nieces," or "my descendants." You can also make gifts to charities or provide that assets are to be transferred into trusts.

If you leave a gift of a specific item of property, you should think about what you want to do if the item isn't in your estate when you die. You may want to provide an alternative gift. Similarly, you should consider what you want to do if the recipient of the gift dies before you. You may want to identify an alternate beneficiary.





**Residuary clause.** This is an essential provision for all wills. In a residuary clause you state what you want to happen to any property you own that was not disposed of by some other will provision. This clause will ensure that all your assets are passed in accordance with your wishes, rather than by state law.

**Trusts.** Your will can establish one or more testamentary trusts that will come into existence and be funded after your death. For example, your will may set up trusts for your spouse, children, grandchildren, or others. You will need to consider how long the trust should last and when and under what circumstances the trust should make distributions to the beneficiaries.

**Disinheritance.** Your will can contain provisions disinheriting a child or spouse, although it may not be possible to completely disinherit a spouse. A spouse is often guaranteed at least a minimum share of your estate under state law.

**Appointment of fiduciaries.** These provisions name the persons you want to serve as the guardian of your minor children, custodian of your children's property, executor of your will, and the trustee of any trusts your will creates. You should also name successors and alternates in case the first named fiduciaries are unable to serve.

**Powers and duties of fiduciaries.** These provisions spell out the authority of the fiduciary to manage estate or trust property including the power to operate a business, or to sell or invest estate or trust assets. Otherwise, the fiduciary may need to obtain court approval or consent of beneficiaries. These provisions will also require your executor to pay your taxes and debts before distributing your estate.

**No contest clause.** The purpose of this clause is to discourage will contests. It provides that a person who brings an unsuccessful will contest forfeits his or her inheritance.

**Survivorship.** This provision spells out for how long a beneficiary must survive you in order to get his or her inheritance. This is important because when a beneficiary dies at the same time or shortly after you, you may prefer that his or her inheritance go to an alternative beneficiary of your choice, instead of to the deceased beneficiary's heirs.

**Expressions of your wishes and explanations of your gifts.** You may want to indicate how you would like to see a beneficiary use a gift (e.g., to buy a home or pay off debts), but these expressions are not binding on the beneficiary. You may also want to explain why you have chosen to make or not make certain gifts. Alternatively, you may prefer to put these thoughts into a letter that can be kept private and delivered to your beneficiaries and other appropriate parties.



## PROPERTY THAT YOU CAN PASS BY A WILL

When you make your will, you should understand what property will be affected by it. Not every item of property that you own can be disposed of by your will.

Property will pass according to the terms of your will in these three cases: (1) you do not own it with someone else who has a right of survivorship; (2) it is not subject to a beneficiary designation (other than one leaving it to your estate); or (3) you have not transferred it into a living trust.

Property titled in your name that passes according to your will (or under intestacy law if you die without a will), as a general rule, must go through probate.

This type of property typically includes:

- Real estate.
- Bank and brokerage accounts, CDs, stocks, and bonds.
- Automobiles.
- Tangible personal property.
- Royalties generated by intellectual property.
- Money owed to you at the time of death, such as personal loans, a final paycheck, a pending lawsuit, or refunds of insurance premiums.

## PROPERTY THAT YOU CANNOT PASS BY A WILL

Property that you own with someone else who has a right of survivorship cannot be passed by will. Any disposition of the property you attempt to make in your will is ineffective. Such property will not need to go through probate before it can be titled in the name of the survivor or beneficiary. Similarly, assets subject to beneficiary designations will not pass by will unless the designated beneficiary is your estate or personal representative.

This type of property typically includes:

- Life insurance, unless your estate or personal representative is named as the beneficiary.
- Your employer-provided retirement plan, unless your estate or personal representative is named as the beneficiary and you are not married.
- Your IRAs, unless your estate or personal representative is named as the beneficiary.
- Trust assets.
- Assets that pass by right of survivorship, such as joint bank accounts or real estate held as joint tenants.



# WHERE SHOULD YOU KEEP YOUR WILL?

Keep your original will in a safe place where someone can easily find it after your death. Although you may be concerned about protecting your will, wills are seldom stolen or destroyed. The family's inability to find the will is a far more common problem. In choosing where to store your will, think about who will be looking for it and how he or she will best be able to find it. You probably want to tell your executor and at least some beneficiaries where your will is. You may also want to provide them with copies.

You may want to store your original will in your home where you keep other important documents. A fireproof safe can be a good choice. A safe deposit box is another option. However, the person looking for your will needs to have access to the place where you have stored it. Therefore, if you choose your safe deposit box to store your will, be sure to make arrangements with the bank to allow your executor to open your box after your death. If you don't, the box may be sealed and a court order may be required to open it.

You also might notify your attorney about where you will be keeping your original will. Your attorney can then make a notation in the file regarding the location of the will. Then your attorney will be able to provide this information to your executor or beneficiaries after you have passed away.

By making sure that your will can be easily located after your death, you can save considerable hassle and expense for your beneficiaries.