



The FindLaw Guide to Writing a Will

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A will may be one of the most important documents you will ever create. If you are ready to draft a will, or want to make changes to an existing will, do you know what the legal requirements are? Here is some information that can help.

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Introduction

Wills are the most common way for people to state their preferences about how their estates should be handled after death. Many people use their wills to express their deepest sentiments toward their loved ones. A well-written will eases the transition for survivors by transferring property quickly. However, a poorly drafted will can create a mess when it comes time to divide your assets.

Drafting a will is not difficult, but there are specific requirements you have to meet. Do you know the basic requirements to draft a valid will? Do you know what provisions you should include and which are illegal? FindLaw and its directory of attorneys can help you with these questions, as well as many others.

Write a Valid Will

Formal requirements for wills vary from state to state. Generally, the person who is writing the will, called the testator, must be an adult of “sound mind,” meaning that the testator must be able to fully understand the meaning of the document. In addition, wills must be written and signed, usually in the presence of witnesses. Some states allow a will to be in the testator’s own handwriting, but a better and more enforceable option is to use a typed or [pre-printed document](#).

If you don’t follow the will requirements in your state, your will may be deemed invalid. In this case, you will be considered to have died “intestate,” (without a will) and a probate court will divide up your assets according to default rules. You don’t want this. If you are unsure about the legal requirements to draft a valid will in your state, FindLaw can help you [get started](#).

Provisions to Include and Avoid

Two important provisions to include in your will are appointing a representative and choosing a guardian if you have minor children.

A personal representative will make sure that your wishes are carried out after you have passed. A representative’s duties can include adding up your assets, collecting debts, filling out paperwork, etc. The chosen representative should be advised of his or her responsibilities, in order to ensure there is a willingness to undertake these duties.

If you have minor and dependent children, you will also want to name a guardian for them in your will. If a guardian is not named, a court may appoint someone who is not necessarily the person you would have chosen.

These are just some of the provisions to keep in mind when drafting your will. You should also be aware that there are provisions that should be avoided. For example, some laws



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prohibit disinheritance of spouses or dependent children in your will. In most jurisdictions, a surviving spouse has a right to a certain part of your estate that cannot be given away in a will. In addition, some types of property like joint tenancies and certain insurance policies cannot be given away in a will.

Changing and Revoking a Will

It is extremely important to keep your will updated. As life changes, so do potential beneficiaries and heirs. If you do not keep your will updated, it may not reflect your wishes if you get married, have a child, divorce, etc.

For major life changes, you may want to consider making a new will and revoking your old will. To do this, simply write a statement in the new will that states that you revoke all wills that you have previously made. This is usually sufficient to revoke any previous wills, but you may also want to consider destroying any of your previous wills in order to avoid confusion.

For smaller changes, you can change your will by adding a “codicil”. A codicil is like an amendment or addition to your will. Use a codicil to revoke part of your will or add a new provision. To be valid, the codicil must generally meet the other requirements for making a valid will. Keep in mind that codicils can cause confusion, and should only be used in limited circumstances.

STOP

Should I Talk to an Attorney?

Drafting a will is not difficult. But should you fail to meet the requirements to draft a valid will, the repercussions can be devastating.

If you are unsure about the specific requirements in your state, are unsure of what provisions to include, or want to know how to make changes to your will, you may need to speak with an estate planning lawyer. An effective lawyer can help educate you on your state’s laws and how to draft a will that represents your wishes. If you have more complex assets, an estate planning attorney can also help you create trusts, minimize tax exposure, and other matters.

You can locate an estate planning lawyer now by visiting [Findlaw.com](http://findlaw.com) and choosing among several quality-assured lawyers in your area.

For More Information

Regarding writing a will and other estate planning issues, please visit our website at <http://estate.findlaw.com/>

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