

# Frequently Asked Questions

## Will Preparation

The information provided on this document is for reference only. Legal advice should be received from a licensed legal professional.

### What is a Living Will?

A Living Will is a legal document in which you, as a competent adult, can state your wishes regarding your future health care. It is used by people who want to express their feelings about the withholding or withdrawing of life-sustaining treatment that prolongs the process of dying.

### What is a Healthcare Proxy?

A Healthcare Proxy is a document which allows you, as a competent adult, to appoint another person as “agent” or “attorney in fact” to make decisions for you regarding your health care in the event you lose your decision making capacity or the ability to understand and appreciate the nature and consequence of health care decisions. The Proxy can be general and apply to all medical decisions, or it can impose limitations and spell out specific instructions. Some states may limit its applicability in certain situations.

### Should I execute Both a Living Will and a Healthcare Proxy?

Yes. The Living Will is your own expression of your attitudes and wishes about your health care. This instrument is especially important if you do not have a person to appoint as your Health Care Proxy, or if the person you have appointed is not available. The Health Care Proxy is important because it names your selection of the person who is to make decisions on your behalf if you cannot do so. You will want to have your health care agent communicate the views expressed in the Living Will to your physician to be sure the physician understands your wishes.

### What is the Purpose of a Will?

The primary reason for making a will is to leave your property to those you care about and in the proportion you choose. A will is a written instrument made to take effect upon death, whereby a person disposes of property, disposes of his body or any part thereof, appoints a fiduciary or makes any other provisions for the administration of the estate, which is revocable during his lifetime.

### What Happens if I Die Without a Will?

If you die without a will, your property will be distributed amongst your family members, and perhaps not exactly the way you prefer. A will may be tailored to your own particular needs. You name as executors, those persons you want to handle your property. An executor can be a (adult) child, a spouse, a close relative, friend, or a bank or trust company that specializes in the handling of estates. The choice is yours only if you make a will. Remember the advice of an expert may prove invaluable.

### Can I Just Write My Own Will?

Today it is very common for people to pick up printed forms and write them in their own handwriting. Often this does not constitute a legal will, and even if it does meet the bare minimum legal requirements, it may not be the best will for one’s personal situation. To have the best plan for yourself and your beneficiaries, call a lawyer and make an appointment to discuss your will. Remember the advice of an expert may prove invaluable.

### Can I Use a Will to Name a Guardian to Care for my Young Children?

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.

## What Makes a Will Legal? Do I Need a Lawyer to Draw the Will?

Any adult of sound mind is permitted to make a will. There are just a few practical requirements a will must realize:

- 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.
- You must date and sign the will.

You don't have to have your will notarized. In many states, though, if you and your witnesses sign a sworn statement before a notary public, you can help simplify the process with the court to prove the legitimacy of the will after you die. You do not have to record or file your will with any government agency. Be sure to keep your will in a safe, accessible place and be sure the person in charge of handling your affairs knows where it is. A lawyer does not have to write the will, and most people do not need a lawyer's help to make a basic will. But if you have questions you can't find the answers to or your situation is unusual, it may be worth it to see a good lawyer.

## Do I Have to Leave Something to My Spouse and Children?

The law protects surviving spouses from being left with nothing. In some states, your spouse automatically owns half of all property and earnings acquired during the marriage. You can leave your half of the community property, and your separate property, to anyone you choose. Generally speaking, it's legal to disinherit a child. If, however, it appears that you didn't mean to cut a child out of your will -- 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 Contest My Will After I Die?

Very few wills are ever contested. When they are, it's usually by a close relative who feels cheated out of a share of the late person's property. To get the will invalidated in its entirety, 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 unjustifiably influenced by someone.

## What is Probate?

Probate is the legal process of establishing the legitimacy of a will and settling an estate.

## How Does the Probate Process Work?

Probate usually functions like this: After your death, the person you named as executor -- or, if you die without a will, the person appointed by a judge -- files papers in the local probate court. The executor proves the legitimacy of your will and presents the court with lists of your property, your debts, and who is to inherit what you've left. Then, relatives and creditors are officially notified of your passing.

Your executor must find, secure, and supervise your assets during the probate process, which can take anywhere from a few months to a year. Depending on the sum of your debt and the contents of your will the executor may have to decide whether or not to sell your real estate, securities, or other property.

## Does All Property Have to Go Through Probate?

No. Most states permit a certain amount of property to pass free of probate or through a simplified probate procedure. Property that passes outside of your will -- say, through joint tenancy or a living trust -- is not subject to probate.

## Who is Responsible for Handling Probate?

In most cases, the executor named in the will takes handles probate. If there isn't a will, or the will fails to name an executor, the probate court names someone to handle the process. Most often, the job goes to the closest competent relative or the person who inherits the bulk of the deceased person's assets.

## What is an Executor?

The executor is the person named in a will or appointed by a court to handle a person's financial affairs after death. This means taking care of property, paying bills and taxes, and making sure assets are transferred to their new rightful owners. If probate court proceedings are required, as they often are, the executor must handle them or hire a lawyer to do so.

## Does a Person Named Executor in a Will Have to Serve?

No. An executor can accept or decline the responsibility, and someone who agrees to serve can quit at any time. If the will named an alternate executor, that person will take over. If not, the court will assign someone to take over.