



Wills in Minnesota

What is a Will in Minnesota & Why Would I Want One?

What is a Will in Minnesota?

A will (a.k.a. a “Last Will and Testament”) is a legal document which allows you to:

- Transfer your property at death
- Name a personal representative (sometimes called an administrator or executor) for your estate
- Name a trustee to a trust
- Appoint a guardian for your minor children
- To make very specific gifts to those you choose

A will is not the same thing as a “living will” or a “trust”. A living will and a trust are different legal documents which are not discussed in this guide.

What is a “Simple Will”?

A simple will is a will that does not incorporate any kind of trust instrument.

Why would I want a Will?

If you have not created a will or other legal instrument to distribute your property at death, your property will be distributed by the State of Minnesota. In this case, the State of Minnesota will distribute your property based on what’s called the laws of intestacy. In addition, the State will decide who will administer your estate.

A will preserves your right to distribute your property at death to whoever you choose. You get to decide who gets your property and

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Phone: (651)-207-6162

Fax: (651)-207-6204

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perhaps more importantly for you, who doesn't. For many people, this is the most important reason to make a will.

Wills can be particularly important if you want to leave property to someone outside your family, like a close friend, a business, a church, or other charitable organization. Under Minnesota Law, by default certain family members will have the right to your property if you die without a will and none of these other entities will have any right to your estate.

It can also be important if you want to leave very specific items to different people, such as family heirlooms, antiques, and other items of sentimental value, for example.

What can I include in my will?

Most commonly people think of a will as a way to distribute money and other property at death. In addition to this important function, a will allows you to assign a personal representative to administer your estate, name a trustee to a trust if you have created one, and name a guardian for your minor children.

You can be as specific as you'd like in your will. For example, you can give a piece of sentimental property, like a family heirloom, to a specific person who otherwise would not have received it.

Who can I include in my will?

You may include any person or entity you wish in your will.

Who can I disinherit with my will?

Aside from, in certain circumstances your spouse and creditors, no one has an inherent "right" to any of your property when you die

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(assuming you've created a will). Aside from the above exceptions, you may disinherit anyone. Most notably, your children, your siblings, and your parents do not have any rights to any of your property at your death.

What if I want to revoke or change my will?

So long as you retain mental capacity, you can revoke or change your will at any time. Some typical methods include creating a codicil, which acts like an amendment to the will or simply creating a new will which explicitly revokes the old one.

When might I want to change my will?

As stated above, you may change your will whenever you are capable. However, the following are some typical situations which may prompt a will change:

- You get married or divorced
- New children enter the family, whether by birth, adoption, or marriage
- Any of your children turn 18
- You have a significant change in assets
- Any time your wishes are no longer accurately represented by the will

How do I make the will legally valid?

After a will is written, you will need to sign it or have someone sign it for you under your instructions and with you present. In addition, two witnesses will need to sign it. The witnesses either need to see you sign the will or you will need to verify in their presence that the signature on the will is indeed yours. Although not required, it is best practice that the witnesses be disinterested parties. In other words,

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the witnesses shouldn't have any stake in the will. This includes the lawyer who drafts it for you.

After you and the witnesses have signed the will, the will is a valid legal document in the State of Minnesota. You may sometimes hear this process of signing and finalizing the will as its "execution".

What do I do with the legal will now that I have it?

After you've completed the signing formalities, good practice is to store a will in a safe place that's also easily accessible after your death. It's also important to communicate to your named personal representative and others you trust where the will is located.

What is a "self-proved" will?

Although it's technically not required to make the will valid, making the will "self-proved" helps strengthen it against potential will challenges after death. It is best practice to always make your will self-proved.

A self-proved will provides evidence that you met all of the conditions to make a valid will, including that you are 18 or older, that you appear to have mental capacity, and were free from any kind of undue influence or duress from others.

You may make a will self-proved when you and the witnesses to your will sign affidavits in front of a notary who also signs and stamps the affidavit. These affidavits should always be stored with the will itself.

What happens with the will after I die?

Anyone may begin legal proceedings to obtain the will, evaluate it, determine its validity, appoint the personal representative, and

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oversee the distribution of assets from the estate. This process is known as “probate”. The process may be expedited depending on the value of the estate.

Why is using a lawyer to draft your will is a good idea?

A lawyer checks for issues that may cause problems for your estate if they are not addressed in the will or are addressed incorrectly in the will. A lawyer will make sure that the will being drawn up is the right one for you, that is tailored properly to your individual circumstances.

A good lawyer will also readily communicate with you when you have questions and help you through the process as needed. They can provide support and peace of mind that the will is a legally valid instrument that will stand up to potential challenges in probate.

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Thank you for downloading this guide. If you have more questions about wills in Minnesota or would like to use my firm to draft a will for you, please visit me at:

www.majeskilaw.com, email me at mattmajeski@majeskilaw.com or give me a call at 651-207-6162. If I'm unavailable, please feel free to leave a voicemail.

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