

# LawFacts

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What you should know about.....



## Wills

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### **What is a will?**

A will is a document that sets forth how a person would like to have his or her probate property distributed upon death. To be valid, a will must meet certain formal legal requirements.

### **Who may make a will?**

Any person who is at least 18 years old, of sound mind, and not under undue influence may make a will in Ohio.

### **How is a will made?**

With limited exceptions, a will must be written and signed. A will must be witnessed in a special manner provided by law by at least two people who have no interest in the will, and it must be executed in strict accordance with the law. The best way to ensure that a will is properly executed is to have an attorney supervise the signing of the will.

### **May I change my a will after I have signed it?**

Yes; you may change your will as often as you wish. You may change your entire will or you may change only part of it by using a document called a codicil. You should have your will reviewed if you have a change in circumstances, such as a marriage, the birth of children, a divorce, changes in the nature or value of your estate, or if there are changes in the law. Changes in circumstances require careful analysis and reconsideration of all your will's provisions to determine if it needs to be revised. To avoid potential unintended consequences, you should not make changes without the assistance and advice of an attorney.

### **How long does a will last?**

A properly executed will is valid as long as it is not revoked. A will is generally revoked when a new will is executed. You also may revoke a will by destroying it with the intention of revoking it.

### **Does a will increase probate expense?**

No. Generally it does not cost more to administer a will, and it actually takes more effort to administer an estate without a will. When you have a will, the executor distributes your probate property as you have directed in your will. When there is no will, the probate court will follow Ohio law to guide and enforce the distribution of your assets. In either case, the probate court must supervise the will's administration.

A will may reduce administration expenses in a number of ways. A will can reduce taxes and expenses by taking advantage of the *charitable* or *marital deduction* provisions of federal estate tax laws. In many situations, a will can also reduce costs by waiving the requirement of a fiduciary bond for the executor. These granted powers may reduce the need (and additional potential expense) for additional probate court intervention.

### **How large an estate must I have to justify a will?**

Everyone who owns any real or personal property should have a will, regardless of the property's value, because the purpose of the will is to ensure that the property is distributed the way you want it to be distributed, regardless of its value. Keep in mind, your estate may grow in value almost unnoticed through, for example, the repayment of mortgages, appreciation of stocks and other investments, or inheritances from relatives.

### **May I dispose of my property to any person or entity I choose under my will?**

Yes. However, Ohio law gives a surviving spouse and minor children certain rights over property that cannot be defeated by a will. Talk to an attorney lawyer about these rights.

### **What happens to property held in the names of more than one person?**

It depends. Property held in the names of more than one person may or may not automatically pass to the survivor upon the death of one of them. Typically, property held jointly without rights of survivorship will require the decedents' portion of the property to go through probate for distribution. However, some forms of ownership allow property to pass automatically to the survivor or to a designated beneficiary upon the owners' death. An estate planning attorney can help you plan the best way or combination of ways to own property. For more information on ways to avoid probate and to learn more about non-probate property, see the following Ohio State Bar Association publications: "What you should know about . . . Revocable ('Living') Trusts" and "What you should know about . . . Probate."

### **Does a will let me avoid estate taxes and other 'death' taxes?**

The value of your estate will determine whether an estate tax return will need to be filed. However, through the use of tax-planning techniques, a properly drafted will may help reduce the amount of taxes that have to be paid after your death. An estate-planning attorney is skilled not only in the laws of wills and property, but also must be familiar with estate tax laws.

### **What happens if I die without a will?**

If you die without a will, or intestate, as the law calls it, your probate property will be distributed to your nearest family members according to a formula fixed by law. In other words, if you do not make a will, you cannot control who will receive your probate property. You also cannot choose who the court will appoint to administer your estate.

For example, imagine you are a man with two minor children and you die without a will. If your surviving wife is not the natural or adoptive parent of your children, she would receive \$20,000 plus one-third of the remainder of your probate estate, and the balance would be given to a guardian for your minor children. The probate court would need to appoint your widow, or another suitable person, as guardian for your children, and that guardian would need to give the court a surety bond. Then, both children would receive their shares of the guardianship estate upon reaching age 18, regardless of their maturity level. Working out all of these details would be very expensive and time-consuming, and could have been avoided with proper estate planning.

### **Who will manage my estate?**

If you make a will, you may name the person you want to manage the administration of your estate (the executor). If you do not make a will, the probate court will appoint someone (the administrator), to manage the administration of your estate. You may or may not know the person the court appoints.

### **Can life insurance take the place of a will?**

Generally, no. If a life insurance policy is payable to an named beneficiaries, the will of the insured has no effect on the distribution of the insurance proceeds. If the policy is payable to the estate of the insured or if the policy does not list a surviving named beneficiary, the disposition of the proceeds may be directed by a will. You should consult an attorney and a qualified life insurance counselor to ensure the proceeds of your life insurance policy will be handled according to your wishes.

### **Who should draft a will?**

The drafting of a will requires professional judgment. An estate planning attorney can help you avoid pitfalls and help design a will best suited for your situation.

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