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Wills

What Is A Will?

A will is a formal document that lets you provide for the distribution of your estate when you die. An estate consists of real property (e.g., land), personal property (e.g., stocks, bank accounts and cars) and intangible property (e.g., claims, interests, and rights) that you own at death that does not pass outside of the probate estate.

What If I Die Without A Will?

If you have no will, you are said to have died "intestate" and, with certain exceptions, your assets are distributed according to Ohio's statute of descent and distribution. For example, depending on the nature of your family, your estate may be distributed entirely to your spouse or may be divided among your spouse and surviving children. If you want to distribute your estate in amounts or to beneficiaries different from the Ohio intestacy statute, you must have a will.

Why Do I Need A Will?

You need a will if you want to:

1) give specific property to an individual;
2) make special provisions for certain property or individuals;
3) name your executor (the person who will carry out your will);
4) provide for charities or individuals outside your immediate family;
5) name a guardian for minor children;
6) disinherit someone; or
7) leave an entire estate to a spouse who would receive only a portion of the estate under Ohio's statute of descent and distribution.

Who Can Make A Will?

Ohio law permits anyone 18 or older, with sound mind and memory and not under restraint, to make a will. The person making the will is called the "testator". "Sound mind and memory" means you understand:

a. the act of making a will;
b. the general extent of your property;
c. your family relationship; and
d. to whom you are giving property through the will. "Not under restraint" means you were not defrauded or unduly influenced when you made your will.

What Must I Do To Make A Will?

Your will must be in writing. It may be handwritten or typed. You must date and sign the will on the last page in front of two competent witnesses, who see you sign the will and hear you acknowledge that the will is yours. The witnesses must be at least 18 years of age. The witnesses must sign the will, and they can also testify that you were of sound mind and memory and not under restraint. If you are unable to sign the will, another person may sign the will for you if you specifically direct the person to do so, and the person signs in your and the witnesses' presence.

Where Should I Keep My Will?

Keep the original will in a safe place where it may be found easily after your death. Tell your executor where it can be found. Only the original can be admitted by the probate court. The probate court can only accept a copy after a hearing for lost wills. Wills, deeds to burial lots, and insurance policies left in a safe deposit box may be released to a representative of the decedent. However, the bank is required to make a list of those documents.

What Kind Of Property Can Be Distributed By A Will?

Generally, any land or personal property owned by you at the time of your death can be distributed to beneficiaries by your will. Exceptions are:

1) property interests that terminate at death (e.g., life estates);
2) survivorship bank accounts or land held jointly with the right of survivorship;
3) insurance death benefits made payable to specific beneficiaries;
4) payable on death bank accounts; and
5) transfer on death designation affidavit for real estate.

Must The Executor Of An Ohio Will Be An Ohio Resident?

An out of state executor is allowed if the executor is related by blood or marriage or if the state in which the out of state executor resides permits a non-resident, non-relative to serve as an executor.

Can I Disinherit My Spouse Or Children?

If your spouse is omitted from or disagrees with the will, she or he can instead choose to take that part of the estate she or he would have received if you had died without a will. The spouse must do this within five months of the initial appointment of the estate administrator or executor. A child can be disinherited, but this intention should be stated in your will to avoid the conclusion that the disinheritance was an inadvertent omission.

Do My Beneficiaries Have Any Rights Before My Death?

No. A will does not take effect until your death. You can change or revoke the will at any time before your death. When you revoke a will, it means that the will has been canceled and is no longer valid.

How Can I Change My Will?

You can make additions to your will by signing a "codicil," with all the formalities of a will. The codicil must be in writing, dated and signed by you and two witnesses. You cannot change a properly executed will by writing revisions into the will, even if you initial and date the changes. Such changes are valid only if they occur before the will is signed and witnessed. If major changes are needed, consider making a new will.

Must A Will Be Presented To Probate Court?

Yes, except in rare cases. A will cannot legally transfer property on its own. It must be accepted by the probate court. Beneficiaries cannot receive land through a will until the probate court orders the transfer after accepting the will. Simplified probate procedures called "release from administration", and "summary release from administration" may be used in small estates if the total value of the estate is $35,000 or less regardless of heirs or $100,000 or less if the spouse is the heir and certain criteria are met.

What If I Lose, Destroy Or Spoil My Will?

A copy may be accepted if it was dated and signed in front of two witnesses and has not been revoked. However, if your will is lost, damaged or destroyed, the best option is to make a new one.

How Are Wills Revoked?

A will is revoked:

1) if you or someone in your presence and at your request or express written direction, tears, obliterates or destroys the will with the intention of revoking it;
2) you make a new, valid will; or
3) you make a codicil revoking the will. If you are divorced, your marriage has been dissolved or annulled or you are legally separated, any property granted under a will to a former or separated spouse is revoked, unless the will expressly provides otherwise.

Are Verbal Wills Valid?

A validly executed written will cannot be revoked by a subsequent oral will. If you have no written will, a verbal will can be valid with regard to any property you own, except land. Examples of personal property that can be transferred under a verbal will include stocks, bonds, cars, coin collections, jewelry and appliances. A verbal will is valid only if you are dying, know you are dying and say what you want in your will to two competent, disinterested witnesses. The witnesses must put the will in writing and sign the transcription within ten days. The transcription must be filed in probate court within three months after your death.

Are Wills From Other States Valid In Ohio?

Yes, but only if the will complied with the laws of the state in which it was made.

Can I Avoid Probate?

Probate is a legal process that transfers your property after your death. However, you can avoid certain property passing through probate by:

1) holding property jointly with the right of survivorship;
2) establishing *inter vivos* (living) trusts
3) naming beneficiaries to your retirement and investment accounts;
4) establishing payable on death accounts; and
5) creating transfer on death affidavits for your real estate and Bureau of Motor Vehicle titles.

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