

## How long is a will valid?

A will remains effective until it is changed or revoked. An existing will should be reviewed periodically. If your will is not up-to-date when you die, important people in your life may not be provided for. Think about changing your will when:

- You marry or divorce.
- There is a birth or death in the family.
- There is a change in the value or kind of property you own.
- The person you want to be guardian or personal representative moves away or dies.
- You move to another state.

Any such change in circumstances requires careful analysis and reconsideration of the provisions of your will.

## Can my personal representative handle my affairs if I become too sick to do so myself?

No. A will only takes effect when you die. If you want someone to handle your affairs if you become disabled or incompetent, you should talk with a lawyer about designating an "Attorney-in-Fact".

## What is a "living will"?

In 1998, Minnesota law authorized the use of Health Care Directives, which allows you to appoint a health care agent to make health care decisions when you become unable or unwilling to make or communicate such decisions, and to give instructions as to what choices you prefer. The Health Care Directives law combined and replaced Living Wills and Durable Powers of Attorney for Health Care. A Health Care Directive can describe your preferences about issues such as surgery, nursing home/specialized care, medication, religious concerns, funeral planning, organ donation and/or the types of life-sustaining procedures to which you want to be subjected. For example, having a Health Care Directive can prevent a person from being kept alive by a respirator or other medical device. The Health Care Directive is effective at a time when a person is physically (medically) alive, but cannot survive without extraordinary medical procedures.

## Death, taxes and wills

Many estates may not have to pay federal or state "death taxes" but, depending on the assets, there can be substantial income tax consequences associated with death. After death, little can be done to relieve an estate from adverse tax consequences caused by lack of a will, a trust or a proper estate plan. An important purpose of a will can be to reduce the taxes that will have to be paid at your death and at the death of one or more of the beneficiaries of your will.

This pamphlet contains general information and is not intended to be legal advice. You are encouraged to talk to an attorney regarding your specific legal needs.



At **Burville Law Office, P.A.**, we can assist you with all your estate planning needs including: Wills, Trusts, Power's of Attorney, Health Care Directives, Designations of Guardian, and all other tools necessary for your particular estate planning needs.

Please contact us with any questions or for assistance in all your estate planning needs:

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# WILLS in Minnesota

Why you need one



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When you die, what will happen to the things you own? Who will take care of your minor children? You can answer these questions in a written document called a will. A will is a written direction controlling what happens to your property when you die. Each state sets the formal requirements for a legal will. In Minnesota, a will (1) must be written by someone who is at least 18 years old and of sound mind, and (2) must be signed and witnessed as prescribed by law.

### What does a will do?

A will is your way of saying who — family, friends, organizations — is to receive your estate when you die: the furniture, jewelry, cars, bank accounts, business or real estate that you own. In your will, you can leave particular things to specific people.

In your will, you can also name a guardian for your minor children and a trustee to manage their money. While the same person can do both, it may be wise to consider different people for these roles in order to protect the children's interests.

You can also choose a personal representative (previously called an executor) to wind up your affairs. This person or institution gathers your property, pays your debts and any taxes due, and delivers the balance of your estate to the people you have chosen.

### Can I dispose of my property however I want to in my will?

Almost, but not quite. A married person cannot completely exclude a spouse without the spouse's consent. A parent may disinherit a child as long as disinheritance is not due to a mistake.

There are certain other restrictions, which a lawyer can explain. For example, in Minnesota you can't set up a trust that doesn't have a specific end date.

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

When you write a will, you choose the people and organizations to inherit your estate. If you die without a will, state inheritance laws determine who gets your property. Minnesota law provides first for payment of expenses of administration, funeral, last illness, taxes, debts and family allowances. The balance of the estate is divided among the surviving spouse and your children or other heirs as discussed below.

As of January 1, 1996, the share of your estate that your surviving spouse will get upon your death will depend on (1) if you had descendants and (2) if all of them also were your spouse's descendants. If you and your spouse either had no descendants or all of your descendants are also the descendants of your surviving spouse, then your spouse will get your entire estate. If, however, you have descendants who are not also descendants of your surviving spouse or if your surviving spouse has descendants who are not also your descendants (for example, if one or both of you has children from a previous marriage), then your spouse will take the first \$150,000 plus one-half of the balance of the intestate property. The other half is divided among your heirs in equal shares.

If you have no living relatives and you have not provided otherwise, your property and possessions will go to the state, even if a close friend or companion survives you.

Since the provisions described above are rather complicated, it is advisable to consult a lawyer when making out your will. You can help ensure that your will is consistent with Minnesota law and avoids problems for your heirs.

### Does having a will help avoid probate?

No. Probate is the process of settling your estate after you die. If there is property to be administered or taxes to be paid, the existence of a will does not avoid probate nor does it increase probate expenses. Whenever the owner of property dies, the probate court must either decide that the will is valid or determine who is to receive the property if there is no will. That means that with or without a will your estate could end up in probate court. If all of your property is held jointly or in trust, probate may not be necessary after your death. Probate avoidance may increase expenses and taxes and may not be desirable. The advice of a lawyer can help you decide the best plan for your particular situation.

### Are there some kinds of property that are not covered by my will?

**Life insurance:** Money from your life insurance policy will go to the people you've named as beneficiaries on the policy, no matter whom you've chosen to receive property under your will, unless you designate your estate as the beneficiary.

**Retirement plans:** Money from your retirement plan will go to the people you've named in the plan, with or without a will, unless you fail to name anyone or the person named does not survive you.

**Property owned as joint tenants:** You may own real estate, cars, bank accounts, or other property with another person(s) as joint tenants. Your co-owners will inherit your share, no matter whom you've named as heirs in your will.

**Living trust:** Property you have placed in a living trust during your lifetime will go to the trust's beneficiary, with or without a will.

A will is a good idea even if your estate consists of the above kinds of property. For example, if you receive a lottery ticket as a birthday present, your will would cover your unexpected winnings. Or, holding property in joint tenancy may, in some circumstances, actually increase taxes and expenses. A lawyer can design a will and estate plan that will save your beneficiaries time and money later.