OKLAHOMA
Human Services

About YOUR WILL

About YOUR WILL

Prepared in cooperation with Legal Aid of Oklahoma

What is a will?

A will is a written legal document.

It names the people – your family, friends, and business associates – or organizations, such as schools, churches or charities that you choose to receive your property when you die.

It may cover personal property – like cash, stocks, your interest in a business, cars, furniture, jewelry, dishes, or your stamp collection. It may also cover real property, which is land and any improvement, such as a house or barn, that stands on it.

What is NOT a will?

A will is not a letter, a note or a list of instructions about what you want done with your property after your death.

It is not a way to change what happens to your property that is passed by other means such as a trust, transfer upon death deed, or beneficiary designation.

Who can make a will?

- Anyone 18 or older
- Anyone of sound mind. This means you must understand the important decisions involved in making a will and have reasonable knowledge of what property you own, how much it's worth and to whom you are leaving it.

Note: You do NOT have to be a United States citizen to make a will.

What does a will do for me?

It names your **executor**. This is the person, bank or corporation that handles your affairs after you die.

The **executor:**

- collects any money owed to you;
- pays your debts and taxes; and
- gives the rest of your property to the people or organizations named in your will.

If you don't name an **executor**, the court will appoint an administrator to settle your affairs. This may not be the person you would have chosen.

A will shows exactly who is to receive your property. Under Oklahoma law, people who are not your relatives cannot inherit your property unless you make a will leaving them your property. For example, if you want to leave money to someone who is not a relative, like a charitable organization, you need a will to be able to do this.

You cannot disinherit your spouse. Under Oklahoma law, your spouse will receive the greater of the property left under the will or half the property acquired during the marriage.

You can specify that your children inherit nothing. In your will, you must clearly specify that you are leaving nothing to a particular child or children.

It lets you take special care of an older parent, a sibling who is chronically ill, a child who has an intellectual or developmental disability or who is much younger than their siblings.

It nominates a guardian for your minor children. You should say who you want to take care of your children and any property you wish to leave to them, in case something happens to you.

How can a will save money for my estate?

In the absence of a will, a court-appointed administrator who settles your estate will have to post a bond with the court. This is a legal promise that your affairs will be handled carefully and honestly. The cost of the bond is paid out of your estate.

When you make a will, you can waive or give up the bond for your executor. If you die without a will and the administrator wants to sell real property, a notice of the sale will have to be published in the local legal newspaper. A will that gives the executor a power of sale can save this extra expense. Without the power of sale provision, your representative will have to get permission to sell your property and then follow a strict formal procedure regarding advertising, pricing and other details of the sale. A will with a power of sale clause will avoid most of these formalities. Additionally, in some cases, your estate or your family may owe fewer taxes to the federal or state government if you make a will.


TAX

Can I write my own will?

Yes. This is called a **holographic will**.

A **holographic will** must:

- be entirely in your own handwriting. It is best to write on plain paper, since nothing typed, printed or stamped will be considered part of your will.
- be dated and signed by you.
- specify any children you wish to omit from your will. An example of this would be "after due consideration, I have decided not to leave any of my property to my daughter, Pamela Jones." If you do not provide a statement of your intention to not leave anything to your child, the court will likely award that child a share of your estate.

Note: You can have your **holographic will** witnessed, but you should not have it notarized. Also, if you move to another state, check to see if the law allows **holographic wills**. While Oklahoma accepts handwritten wills, some states do not.

Can I make a joint will with another person?

No. A **holographic will** is only valid for the person who wrote it, not for the person who merely signed it.

Should I write my own will or have a lawyer make one for me?

It is important to have a will with clear instructions of how to dispose of your property. If a will is poorly written, it may cause more problems than if you died without a will. For example, if your will does not clearly state who is to receive your property, it may encourage those receiving less or no property to challenge the will. This, in turn, may create additional attorney fees and other costs that will be charged to your estate to defend your will. That is why it is suggested that you consult an attorney in order to assure that your will is properly made.

An attorney may be able to help you find the best way to handle special circumstances such as protecting the interests of minor beneficiaries, providing for someone with a disability or addressing other issues in the event your beneficiaries die before you do.

Your attorney will prepare a formal will for you. Formal wills must comply with the strict requirements of the law.

What are the requirements of a formal will?

A **formal will** uses prescribed language to say what you want done with your property. It is signed by the person writing the will and two witnesses. Laws about signing and witnessing this kind of will must be followed very carefully. If they are not, the will may not be valid. In Oklahoma, the person who made the will must state that it is the last will and then sign it at the end of the document in the presence of two witnesses who must also sign.

Does a will have to be probated?

Yes. A will must be probated. The witnesses might be required to be present at the probate proceedings if the will is not self-proving. Therefore, the witnesses should be people who are easy to find (it is a good idea to list their addresses), be younger than you, be in good health and not related by blood or marriage, and they should not be named in your will to receive property.

What is a self-proving will?

A **self-proving will** is a formal will that is notarized and contains statutory language. It must be acknowledged by the person who had it made and an affidavit signed by the witnesses before a notary public or a person authorized to administer oaths. The notary seal should appear on the acknowledgement and affidavit.

The main advantage of the **self-proving will** is that witnesses are not required to be present at the probate proceedings. Because of this important feature, it is now the most commonly used type of formal wills.

Should I make a joint will?

A **joint will** should be considered carefully. A **joint will** is one document that contains two wills, and is commonly used by married couples who share the same assets and beneficiaries. In a **joint will**, two people say what is to be done with their property when the first of them dies, and who will receive the remaining property when the second person dies. If both people agree that their **joint will** is binding or final, it may not be changed later by the surviving partner.

There are pros and cons to making a **joint will**. For instance, suppose you and your spouse agree in your **joint will** that your children are to receive your remaining property after you are both deceased. You pass away and your spouse, now in their old age, has been neglected by your children and instead is cared for by another family member. If your spouse wishes to exclude them from your **joint will**, they will have no way of doing so.

What happens to my property if I die without a will?

First, it is not true that your property will automatically go to the state if you die without a will. This only happens if you have no heirs - not even a spouse, relative, children, etc. - to inherit your property.

It is true that your property cannot go to friends, a charity, or your lodge if you do not leave a will – even if you promised it to them. The law will treat all your property the same. There are no special provisions for heirlooms, jewelry or the family business. If you do not leave a valid will, the court will distribute your property to your relatives in a certain order set out by law. This is called intestate succession. If you have no will, the laws of intestate succession apply.

According to the laws of intestate succession in Oklahoma, one half of all property goes to the spouse and the other half goes to your children.

If you have no children, your spouse gets all the property acquired during the marriage and one-third of your separate property; the other two-thirds go to your parents or, if they are dead, to your brother and sisters. The law gives you many choices if you make a will, but none at all if you do not.

Does a will cover all of my property?

No, most likely it does not. In fact, a will does not cover some kinds of property at all. For instance:

- **Joint Tenancy Property** – This refers to property such as a house, car, checking or savings account, held by two or more people as joint tenants' rights of survivorship. When one owner dies, all the property automatically belongs to the other owners and is not affected by the will. In case of joint tenancy, the owners do not have to be married.
- **Life Insurance** – The money from your life insurance policy will go directly to the person, trust or estate named as the beneficiary. Thus, life insurance policies generally are not affected by your will.
- **Savings Bonds** – Certain United States savings bonds are not governed by your will, but go directly to the person listed on the front of the bond.

Remember: All property, including property not affected by your will, is still part of your taxable estate and any taxes must be paid.

Why do I need a will if all my property is joint tenancy property?

It is important to say what should be done with your property should you and your other joint tenants die at the same time, or if you are the last surviving joint tenant. If you do not leave a will, the state must give your property to your relatives in the order set by law. This may or may not be your wish. The same is true for people who own property as joint tenants, even though they are not married.

For how long is my will good?

Your will is good until you change it or write a new one. As long as your mind is sound, you can change or revoke your will whenever you want to. In fact, you should review your will and consider changing it when:

- your family changes because of a birth, death, marriage or divorce;
- the amount of your estate gets much bigger or smaller;
- you move from one state to another; or
- your executor can no longer serve.

In any case, you should review your will every few years, even if no major changes have taken place in your life.

Remember: If you decide to make a new will, be sure it revokes all your old wills.

Date your will. Your most recent will is the one the court will follow in distributing your property.

What is probate?

Probate is a court procedure that provides for the change of legal ownership of your property when you die. The purpose of **probate** is:

- to determine your valid last will;
- to safeguard your spouse and minor children's rights;
- to protect your creditor's rights;
- to pay any estate or inheritance taxes due;
- to determine who gets your property; or
- to oversee the work of your executor.

How much will probate cost?

Court costs are charged to probate your will. The estate will also have to pay the cost of publishing notices. An executor or administrator will be entitled to a small fee for handling the estate plus expenses. An attorney will be entitled to a reasonable fee, which will be reviewed by the court.

OKDHS Pub. No. 91-34 Revised 11/2021 This publication is authorized by Oklahoma Department of Human Services Director Justin Brown and printed by DHS in accordance with state and federal regulations at a cost of $325.89 for 100 copies. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries. Members of the public may obtain copies by calling 1-877-283-4113 (toll free) or by downloading a copy at www.okdhs.org/library.

Can I omit an heir from my will?

You cannot totally disinherit your spouse. You can, however, leave nothing to any of your other relatives, including your children. With regard to your children, it is very important that you clearly indicate in your will that you intend to leave nothing to a specific child or children, as discussed previously.

Will there be taxes to pay when I die?

Both federal and state law can impose a tax on your estate when you die. The two main types of taxes are **estate** and **inheritance**. Whether your estate or your property will have to pay one or both of these taxes depends on the size of your estate and who receives it. Your property generally will not be given out until all the taxes due are paid.

Where should I keep my will?

The preferred storage place for your will is a fire-proof safety deposit box. An alternative available in some counties is filing the will with the court clerk. Be sure to let your family members or others who need the information know where your will is located.

Remember: *This pamphlet is offered for educational purposes only; it is not intended to solve individual legal problems. You may need to consult a lawyer. If you cannot afford a lawyer, call to see if you are eligible for a Legal Aid lawyer at no cost to you. Free legal advice is available to all people 60 and over, as a result of the Older Americans Act.*

For more information call

Legal Aid Services of Oklahoma

1-855-488-6814