



Wills

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A will is a declaration in which you specify what is to be done with your property when you die. It not only describes your wishes regarding the property in your estate, it deals with a number of other matters also. The only property that can be disposed of by a will is property that is solely owned by the one who makes the will. When a Wyoming resident dies without a will, the laws of Wyoming take over and in essence, the State makes a will for that individual.

A will is a key feature of an estate plan. One drawback is that a will must go through probate. It is important to keep it up-to-date as the originator of the will may alter his wealth position, marital status or have other significant changes. Keeping those kinds of changes in one's head does not provide protection for survivors and may cause them distress.

Who can make a will?

Any person of legal age (18) who is of sound mind may dispose of all his or her property by will except for the amount needed to pay debts and that which by law goes to a spouse and minor children.

The right to pass property to anyone of personal choice after death is granted by law. Since laws deems what can and cannot occur it is important to know what those restrictions entail. The maker of a will (the testator) cannot deprive his or her surviving spouse from taking a share of the property. For example, if the testator has all the property in joint tenancy at death, the spouse can claim a percentage of the estate even though she or he is not a party to the joint tenancy.

Is a will necessary?

For most people a will is the heart of who gets what. At a minimum a will is a backup device essential to any transfer of property that somehow got left out of other methods, such as a trust, that avoids probate. A will is best for transferring some types of property like a checking account, frequent flyer miles or a vehicle.

Wills can be used to disinherit a child and are used to name an executor or personal representative of your estate upon death. Your executor/personal representative should be the person you trust the most and who is willing to do the job. It is generally best to name the same person you name as the successor trustee of your trust as your executor/personal representative.. Your executor/personal representative is responsible for arranging probate and supervising the transfer of your will property to your beneficiaries. If your property is over the federal estate tax threshold your executor/personal representative is responsible for filing a federal estate tax return. Since Wyoming has no state tax there is no state tax to file.

A will is used to name a personal guardian for minor children as minors cannot legally own more than a minimal amount of property without adult supervision.

A non-earner spouse should have a will. It is not advisable for spouses to have a joint will.

Some spouses choose to have "mutual wills" drawn. They are separate wills that have reciprocal provisions. Usually each spouse leaves all his property to the other.

After the death of one spouse, the survivor's estate will usually include all or part of the deceased spouse's estate. It is important that each spouse's estate plan, including wills, be coordinated according to how the property is titled.



Types of Wills

Formal, Witnessed Wills

This is the most common type of will. Spouses do not have to have identical wills, and it is advised against spouses having joint wills. There must be a witness and that witness cannot benefit from the will. Once the will has been executed, it can be placed in a protected place, usually in an attorney's vault or in a bank box.

Attorneys generally advise having one original will with conforming copies that can be kept at home for reference.

Holographic Wills

Generally, a holographic will is one that is entirely handwritten. An attesting witness is not needed for a holographic will. However, it is suggested that a will be executed with witnesses since challenges can be brought by those who believe formalities of law have not been met. A lawsuit is possible for such a small thing as the will being handwritten on a sheet of paper that has a typed letterhead.

Pour-Over Wills

A pour-over will directs that the property in the will go to (pours over into) a trust. This can be handwritten or typed and there must be at least one substantive section. The most common provision leaves all or a part of your property to whomever you desire. You must appoint at least one executor, the will must be dated and you must sign the will in the presence of two witnesses who are adults of sound mind and who will not inherit under the will.

Pour-over wills are not desirable to use with a basic probate-avoidance living trust as pour-over wills do not avoid probate. All property that is left through a will must go through probate unless the amount left is small enough to qualify for exemption from normal probate laws.

It simplifies things just to use a standard backup

will to take care of any left over property. In a backup will you can name the people you want to get the property and skip the step of pouring the property through a living trust after your death.

There are two situations when a pour-over will is desirable.

1. If you have set up an AB living trust to save on estate taxes and the spouses want up to the maximum amount allowed under the federal estate tax exemption to wind up in the trust of the deceased spouse: Each spouse writes a pour-over will leaving his or her will property to the AB trust. After one spouse dies the other spouse should amend his or her will or make a new one.
2. If you set up a child's trust as part of your living trust, providing for the management of property left to a young beneficiary, then you may want any property that child inherits through your will to pour over into your living trust. If you did not do it that way you would create two trusts for the child, one in the will and one in your living trust.

Can a will be changed?

Yes, a will can be changed either by codicil (an amendment to the will) or, by making a new will. It is important to keep a will up to date. If you have a child or get married after you made your will, you must revise it, and your estate plan, to reflect your new situation. If you don't, your estate may become enmeshed in laws designed to protect "after born children" and spouses.

Usually simple changes to a will are made by codicil (amendment). A codicil is much like a "P.S." in a letter. When there are too many codicils then it is advisable to rewrite the entire will. The goal in a rewrite is for clarity. A new will automatically revokes all prior wills. Revoking a will also revokes the codicils.

Divorce or annulment revokes the disposition of property made by the will to a former spouse. A separation decree does not revoke a disposition of property under a will unless specific language terminates the status of separation.



An executor or personal representative is the individual you name in your will who will carry out your wishes in settling your estate. Wyoming law uses the terms "executor or personal representative"

interchangeably. That person must be of legal age and of sound mind and does not have to be a resident of Wyoming. If the personal representative is not a Wyoming resident there must be an agent or attorney within the state who can receive notice.

Disclaimer

This manual is not intended to be a substitute for legal advice. It is designed to help you become familiar with some of the tools available in planning an estate and the need to do such planning. Laws change when the Wyoming legislature meets and votes to change a section of the law. This publication is based on laws as they exist at the time of printing.