

# What Is a Will?

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A will contains written directions to control the disposition of property at death. The will becomes effective at the time of death.

A man making a will is a testator; a woman is a testatrix.

Each state sets formal requirements for wills. The will must be prepared and executed in accordance with laws governing wills. A will may be added to or changed by an addition called a codicil.

## In Arkansas:

- The maker must be 18 years of age or older.
- The maker must be of sound mind.
- The will must be witnessed by two people, 18 years of age or older and of sound mind. A holographic will does not have to be witnessed.

In making a will a married person cannot totally exclude his/her spouse, nor can a joint tenant prevent the other from becoming owner by survivorship.

## Why Are Wills Important?

- They are of vital importance in estate planning.
- They are the deceased person's final voice.
- They should be planned thoughtfully and prepared by an attorney.



- They should be reviewed from time to time and altered as assets, tax laws and family situations change.

## What If There Is No Will?

When a person dies without a will, he dies "intestate" or without a testament of what he wants done with his property.

The law of the state makes provision for distribution of property if there is no will. After expenses of administration, funeral, last illness, debts, taxes and family allowances, the remainder is divided as follows:

- **A married person leaving spouse and children:** one-third to spouse, two-thirds to children. The surviving spouse's one-third interest in real property is for life.
- **A married person with no children:** the surviving spouse receives all the property unless the couple was married less than three years, in which case one-half goes to the surviving spouse and the other half to the heirs of the deceased spouse.

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- **A widow or widower with children:** divided equally among children. Children of a deceased child take that child's part.
- **Widow or widower or unmarried, no children or descendants:** one-half to father, one-half to mother or all to surviving parent, and if no surviving parent, then to brothers and sisters. Children of a predeceased brother or sister take his or her share.
- **Widow or widower or unmarried, no children or descendants, no parents, no brothers or sisters or descendants of deceased brothers or sisters:** to surviving grandparents, uncles and aunts in equal shares. Descendants of deceased uncles or aunts take his or her share.
- **Widow or widower or unmarried, no children or descendants, no parents, no brothers or sisters, no grandparents, uncles or aunts:** to surviving great grandparents, great uncles or great aunts in equal shares. Descendants of deceased great uncles or great aunts take his or her share.
- **Married man or woman, no surviving relatives of any kind:** all to surviving spouse even if married less than three years.
- **Widow or widower or unmarried with no heirs of his or her own:** to the heirs of the deceased spouse if the marriage was ended by death and not by divorce.
- **Unmarried person, no surviving relatives of any kind:** all to State of Arkansas.

## What Rights Do You Have?

- To make your will and direct where your property shall go. If you are married, there are limitations for disposal of property.
- Parents do not have to give property to children in their wills, but any child who does not receive

property must be mentioned in the will or the court will assume that the child was omitted by mistake. Usually, "I have intentionally made no provision for my son or daughter, John or Jill" is used to show there was no oversight by the parent.

- A will does not increase the cost of disposing of property or payment of taxes, but in some cases it may be written in such a way as to reduce taxes.

## Why Make a Will?

- To plan and direct the disposition of the fruits of a lifetime of work.
- To care for the future and welfare of loved ones.
- To develop an estate plan that will eliminate or limit estate taxes if the maker has substantial real and personal property.

## What Kinds of Wills Are There?

- **Holographic** – handwritten by the testator (person making a valid will).

While it is possible for one to write a will by one's self, it is not advisable to use this method because wills are very special.

- **Professionally prepared** – after consultation, prepared by a lawyer trained in estate planning.

Wills are legal documents and must be executed with certain formalities. Because legal language is highly technical, and because the will must conform to the laws of the state, it is advisable to consult an attorney for the preparation of this important document. Attorneys are specialists in legal matters.

## How Much Does a Will Cost?

The cost of a will varies. Discuss this with the attorney as your first item of business.

This publication was reviewed by Dale M. Taylor, Vice President, First Commercial Bank, Little Rock.

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