

Do I Need A Will?



What is a will?

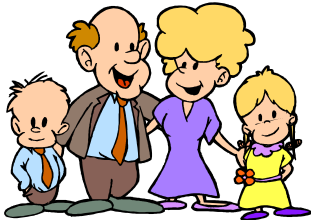
A will is a legal paper. It says what you want to have happen after you die to the things you own. You write a will to say who will get your things. To make a will, you have to be at least 18 years old. You have to be of sound mind. Sound mind means you know what you are doing and decided things for yourself. Unless you write it by hand, the will has to be signed in front of a notary. It also has to be signed by two witnesses.

Why should I make a will?

You may need a will IF:

- You want to leave certain things to certain people.
- You want all or part of your things to go to a friend or charity.
- You want one person to get more or less than the others.
- You want to make sure one person gets nothing.
- You have no close family (parents, children, husband, wife, brothers or sisters).
You want one distant relative get everything.
- You own land, buildings, a business or have anything worth a lot of money.

And you need to save on taxes.



Do you have children under age 18? Do you want to pick who will be their guardian if you die? You do **NOT** need a will to do that. You can just write a letter saying who you want for their guardian.

What if I don't make a will?

The State has a law which really is a one-size-fits-all will. Here is how it works:

1. Usually, your things are divided among your husband or wife and your children.
2. If you have no children, your husband or wife gets everything.
3. What if your husband or wife dies before you? Then your children or grandchildren get everything. All children get the same share.
4. What if you have no husband or wife and no children? Then your parents get your things.
5. What if your parents also have died before you? Then your brothers and sisters, or their children, get your things.
6. What if you die with no husband, wife, children, parents, brothers or sisters? Then other relatives get your things.
7. The State will only get your things if you have no relatives who can get them.

What are the legal rights of a husband or wife?

No matter what your will says, your husband or wife will get something when you die. Tennessee law lets them take at least part of what you leave. How much they can take depends on how long you were married. It can be 10 to 40 percent of what you owned when you died. They can do this instead of taking what you leave them in the will.



Do I have to have a lawyer to make a will?

No. You can write your own will but it is usually better to use a lawyer. This helps make sure everything is done right. In Tennessee you can write your own will. But if you do write your own will, you should write all of it in your own handwriting. A handwritten will is called a holographic will. You must sign and date the handwritten will. It does not have to be notarized. It does not have to be signed by witnesses. There are two problems with this kind of will:

1. It may not be recognized in another state if you move.
2. Two people who know your handwriting must testify after you die. They must testify that the will is in your handwriting.

Can a will be changed?

Yes. But **NEVER** change your will by marking out some parts and writing in new ones. This can make your will no good. Adding a note called a “codicil” can change a will. But you have to know how to do a codicil. It usually is better to make a new will instead of adding a codicil.

Who makes sure your will is carried out?

Someone called a “personal representative”. In your will, you should say who you want this to be. The person should be over the age of 18. The person should be someone you trust to do what you want.

What property can be covered by a will?

Houses, land and everything you own can be left to someone else in a will. Some things do not have to be included in your will. This is because they will automatically go to someone else when you die. This includes things like:

- property you own with your husband or wife as “tenants by the entirety.”
Tenants by the entirety means both of you own the whole thing while you are

alive. When one of you dies the other one still owns the whole thing. The part owned by the person who dies doesn't go to anyone else.

- a “pay on death” bank account. (You tell the bank ahead of time who gets the money if you die.)
- life insurance policies that say a person gets the money if you die. (The policy can't say the money will go to your estate. It must name a person to get the money. This person is called the “beneficiary”.)



These kinds of property are given to the other person right after you die.. They do not have to wait for the court to okay (“probate”) the will.

Is there anything else I need to do?

You should decide if you want a “Living Will”. A living will is not about what will happen to your things. It is about what will happen to **YOU** if you get very sick. A living will speaks for you if you are about to die or there is no real hope you will get better. It tells people who care for you that you want to die naturally. It says you do not want them to keep you alive on machines. You just want care that keeps you comfortable.

You should decide if you want a “Durable Power of Attorney for Health Care”. This gives someone else the right to speak for you when you are sick. You pick a person you trust to speak for you. If you are in a coma or can't say what you want, that person makes the decisions. That person is supposed to carry out your wishes. That person tells people who care for you when to stop medical treatments that would only delay your natural death.



This publication is a joint project of Southeast Tennessee Legal Services and Legal Aid Society of Middle Tennessee.

Note: This pamphlet is not meant to take the place of legal advice. All cases are different and need individual attention.

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