

What is a “living will”?

As of August 1998, Minnesota law authorized the use of health care directives, which allow 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 the types of life-sustaining procedures you want to be subjected to. 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. Consulting a lawyer can help you ensure that your estate will be subject to the minimum taxes possible and that it will be settled in the most efficient way.

This pamphlet contains general information and not legal advice. It is based on Minnesota law in effect at the time of writing. An O'Brien & Wolf lawyer can advise you about how the law applies to your specific situation.

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Wills



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“Lawyers Who Make A Difference”

What does a will do?

A will is your way of saying who – family, friends, organizations – gets your estate when you die. In your will you can leave particular things – furniture, jewelry, cars, bank accounts, business or real estate – 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 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.

What happens if I die without a will?

If you die without a will, state 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.

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.

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?

Yes. For example:

Life insurance. Money from your life insurance policy will go to the people you've named as beneficiaries on the policy 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.

Property owned as joint tenants. You may own real estate, cars, bank accounts, or other property with other(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 winning lottery ticket as a birthday present, your will would cover your unexpected winnings. 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.

How long is a will valid?

A will remains effective until it is changed or revoked. A 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.

If my will names someone as my personal representative, can he or she 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 a conservatorship or power of attorney.