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What Is A Will?

Your Will is a signed, written document that describes how to divide your estate after you die. In Oregon, anyone at least 18 years of age can make a Will. The maker of a Will must follow certain important formalities for the Will to be valid.

What Are The Advantages To Having A Will?

1. **Decide Who is in Charge.** Your Will allows you to appoint a personal representative. This person or financial institution will gather your assets and distribute your property according to your instructions.
2. **Save Money.** In a properly drafted and signed Will, you can excuse your personal representative from posting a bond, thereby reducing estate expense. Often the expense of a bond exceeds the cost of a Will.
3. **Care for Minor Children.** In your Will, you can name a guardian to care for your minor children in the event of the death of both parents.
4. **Provide for Dependents.** You can set up a trust in your Will for the benefit of your minor children or other relatives unable to manage their financial affairs. You can name a trustee responsible for making financial decisions as well as determine the age the trust should end and when distributions are made from the trust.
5. **Plan for Estate Tax.** Married couples with estates in excess of \$1,000,000 (including life insurance and retirement accounts) can include a trust to minimize or eliminate estate and gift tax.

What If I Don't Have A Will?

If you die without a valid Will or Revocable Living Trust, the court distributes your property to your relatives by following a strict formula called "intestate succession," set out in Oregon law.

- If you are married when you die, your spouse will receive your entire estate if you have no children or if all of your children belong to both of you.
- If your children are not also your spouse's children (e.g., from a previous relationship), your spouse receives one-half of the estate and your children share equally in the other half.
- If you have no living spouse or children, your property may go to your parents, siblings, nieces, nephews, or to aunts, uncles, and cousins, depending on your family situation.
- Your estate will go to the State of Oregon only if there is no relative to take the property under the formula set out in the law.



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What If I Don't Have A Will? (*continued*)

The intestate laws do not reflect the desired distribution plan for many individuals. For example, part of your estate could pass directly to a minor child. This could require a court-appointed conservator to manage the minor's funds. A trust for minors would avoid this expense.

In addition, the law of intestate succession does not recognize any relationships outside of blood, marriage or legal adoption. This means that unmarried partners, step-children, close friends, and charities are completely excluded. If you do not have a Will, your personal representative must post a bond. You can waive the bond in your Will and save this expense, as cost of a bond can exceed the cost of the Will.

Does A Will Avoid Probate?

A Will does not avoid probate, rather, a Will directs who receives your estate at the end of the probate process. Probate is the court proceeding that settles a decedent's estate and distributes a decedent's property. Probate also cuts off creditors' claims. This is especially important for business owners and professionals who may have unknown future claims against them.

Do I Need A Will If I Have A Modest Estate?

Any amount of property, such as a home, constitutes an estate, so almost everyone can benefit from having a Will. If you have minor children, disabled dependents, relatives with spending issues, or if you wish your estate to go to anyone other than your spouse and children, then you will benefit from a Will as well.

Can't I Just Write My Own Will?

A properly drafted Will involves decisions requiring professional judgment acquired by years of study, training, and experience. Only a knowledgeable lawyer can help you avoid the many pitfalls of preparing a Will and advise you of the course best suited to you. If you make a mistake drafting your Will, your family will likely not know until it is too late.

Additionally, the maker of a Will must follow certain formalities:

- In Oregon, you must be 18 years old or older to make a Will. Someone under 18 can make a Will only if he or she is legally married.
- You must be "of sound mind." This means you must understand what property you have to give and to whom you are giving this property after your death.



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Can't I Just Write My Own Will? (*continued*)

- A Will must be in writing and signed in the presence of two witnesses. The witnesses must see you sign the Will and then they must also sign it. It is not necessary that they read the Will or have any idea of its contents.

It is critical that proper formalities be followed. A handwritten Will that does not meet the formal requirements is not valid if made in Oregon.

I Have A Will But It Was Drafted A Long Time Ago. What Should I Do?

It is important to have an attorney review your Will every three to five years to keep pace with any changes in Oregon law or if there has been a change in your life such as the birth of a child, marriage, divorce or a significant change in assets. It is especially important to have your Will reviewed if you marry or divorce because a Will is automatically revoked by a subsequent marriage and partially revoked by a divorce. In addition, it may be important to update your Power of Attorney or Advance Directive at the same time.

DISCLAIMER: The information contained in this document is based on Oregon law and is subject to change. It should be used for general purposes only and should not be construed as specific legal advice by Fitzwater Meyer Hollis & Marmion, LLP or its attorneys. Neither this website nor use of its information creates an attorney-client relationship. If you have specific legal questions, consult with your own attorney or call us for an appointment.

