

# WILLS

## What These Words Mean

*Estate* – the property you own in your name alone when you die.

*Personal Representative* – the person in charge of your estate, usually nominated in your will. May also be referred to as "executor."

*Trust* – property set apart, sometimes in a will, for a certain purpose.

## What Is a Will?

A will is a legal paper that states who receives your property when you die. Each state has its own laws about wills.

A will does not avoid the necessity of probate and must be "probated" to have legal effect. You may title your property in other ways so that probate is not necessary.

## Who Can Make a Will?

Any person who is at least 18 years old and of sound mind can make a will.

## When is a Will Legal in Missouri?

In Missouri, a will is legal when it is signed and the signature was witnessed by two people.

A will can be changed through a codicil with the same formalities as when the will was signed. For that reason, it is usually easier to replace with a new will.

A will is self-proving if a special clause is used when the witnesses sign and the maker's signature is acknowledged by a notary public.

An earlier will may be canceled by properly executing a newer will.

You can cancel your own will by destroying the original and any copies you may have made.

Missouri courts recognize wills executed in other states if properly done under their laws.

## What If You Die Without a Will?

Property that you owned alone goes to your close relatives and sometimes to more distant relatives. If no relatives are found, a highly unusual circumstance, your property goes to the state. Without a will to indicate your choice, a decision as to who receives your property is set by law.

## **To Whom Can You Give Your Property?**

You may give your property to any person or organization you choose, in any manner you choose.

Some laws limit what you can do in a will, and you should seek the advice of a lawyer to assure that what you want to do will work.

Your spouse can choose a certain amount, specified in a state statute, from your estate if he or she does not like your will.

## **Why is It Better to Have a Will?**

- You can save some costs by waiving bond and providing for independent administration.
- You can say whom you want to receive your valued personal belongings in a list referred to in the will. You can change the list without changing your will.
- Only you decide who receives your property.
- You can nominate a guardian for your minor children.
- You can say whether or not you want to make anatomical gifts.
- You can provide for minor or disabled children in a trust without the court having to supervise by appointing a conservator to take care of what they would receive.
- You can set up a trust for your family.
- You can save on some death taxes.
- You can say what you want done with the damages you receive if you die in an accident caused by another person.
- You will know that you have planned for your family.

## **How Long is a Will Legal?**

- Until changed or canceled by you.
- A will benefitting a spouse will not be enforceable if you get a divorce.

## **When Should You Think About Changing Your Will?**

- Your family changes through marriage, divorce, birth or adoption of children, or death or disability of a member of your immediate family.
- Your family, property, money, or other assets change in value or nature.
- You move to another state.

## **What Can Take the Place of a Will?**

- Property or bank accounts titled jointly with another(s).
- Life insurance policies and some annuities are ways to own property and provide for their transfer upon your death to named beneficiaries.
- Non-probate transfers such as beneficiary deeds for real estate, pay-on-death provisions on bank accounts and certain other assets, and transfer-on-death provisions on motor vehicle titles, stock certificates, and brokerage accounts.
- Individual retirement accounts (IRAs) and employer retirement plans with employee contributions are ways to provide for their transfer to named beneficiaries

upon your death.

- Property held by a revocable living trust (but you should still have a “pour-over” will).
- Missouri’s law of intestate succession.

These and other methods not mentioned should be used in place of a will only after you have talked to a lawyer.

You should always have a will in addition to these other techniques as a safety net to cover those items that are not “titled” assets.

These techniques, if used correctly and under the right circumstances, may enable you to totally avoid probate.

## **Who Can Write a Will?**

Any capable adult can by law, but there are many pitfalls and, if proper technical language is not used, certain bequests or the entire will may become unenforceable.

Only a lawyer can write a will that you can be sure will be legal.

You should find a lawyer who practices estate planning law. Ask the lawyer how much the fee will be to write the will.

If you need help finding a lawyer, The Missouri Bar offers a free Lawyer Search function, located at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org). Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney. If you would like a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783. The Office of Chief Disciplinary Counsel does not screen the attorneys who are affiliated with this lawyer referral service, and OCDC does not have information on their credentials or abilities.

Hiring a legal professional can be costly, but it is important to remember that you are paying for expertise. If you are unable to afford a lawyer, it might be possible to be represented at a lower rate or on a pro bono basis. In these situations, your quality of representation should not decrease, but your out-of-pocket costs will. The Missouri Bar does not match members of the public with pro bono lawyers, but it maintains a list of available discounted services, which is available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org).

Additionally, some matters, such as an uncontested divorce or traffic ticket, may not call for a lawyer at all. The Missouri Bar produces numerous brochures and blog posts – all available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) – that address general legal questions. While they are not a substitute for a hired lawyer, they are helpful for background information on matters and can help you decide if you need to seek representation.

For more information, go to [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) or call 573-635-4128.