

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 after you die. 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 that you are deciding things for yourself. Unless you write it by hand, the will must be signed in front of a notary. It also must be signed by two (2) witnesses.

Do I need 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 to get everything.
- You own land, buildings, a business or have anything worth a lot of money. You need to save on taxes.
- You want to leave something to a child or to someone who needs help in handling money.

What if I don't make a will?

The State of Tennessee 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 get your things only 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 take this much instead of what you leave them in the will.

Do I need 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 correct. In Tennessee, you can write your own will. But if you do write your own will, it should all be in your own handwriting. A handwritten will is called a holographic will. You must sign and date the handwritten will. It may be helpful to have it notarized, but that is not required. 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. After you die, two people who know your handwriting must testify that the will is in your handwriting.

Can I change my will?

Yes, but you should **NEVER** change your will by marking out some parts and writing in new ones. This can make your will unacceptable in court. 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?

Your will is carried out by 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 put in your will. They automatically go to someone else when you die. The other person gets them right away. He or she doesn't have to wait for the court to okay (“probate”) the will. This kind of property includes:

- 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 name someone to get the money when 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.")
- Property you own with someone else with a "right of survivorship."

Thinking about making a Living Trust instead of a will?

Most people in Tennessee don't need a Living Trust.

What about estate taxes?

Could what you own be worth \$600,000 or more? Then you should see a lawyer about estate taxes. Is what you own worth less than \$600,000? Then estate taxes shouldn't be a problem.

Is there anything else I need to do?

You should decide if you want a "Living Will." A living will does not say what should happen to your things. It says what you want to 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 don't want them to keep you alive on machines. You just want them to keep 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 get very sick. If you are in a coma or can't say what you want, they make the decisions. They are supposed to carry out your wishes. They make sure the people who care for you do what your Living Will says.

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.

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

West Tennessee Legal Services

Jackson 731.423.0616 Toll Free 1.800.372.8346
Dyersburg 731.285.8183

Selmer 731.645.7961
Huntingdon 731.986.8975 Toll Free 1.800.499.1602

What Your Attorney Should Know

When starting your estate plan, you can save time and money if you have necessary information in hand for that first visit to your attorney. The following checklist is a condensed tally of information your attorney will need. Use additional pages when making your list.

- Personal information (family members' names, birth dates, addresses, occupations, social security numbers).
- Bank accounts (name and location of banking institutions, name as it appears on accounts, number on each account)
- Stocks and bonds (description, years purchased, number, exact name of owner, face value, cost)
- Life insurance (company, policy number, double indemnity, amount owned by husband, wife, joint, exact name of owner, insured, and beneficiary on policy)
- Trusts (types, location, trustee, who established, exact name of beneficiary, value owned by whom)
- Notes, mortgages, and accounts receivable (description, year required, value, person who owes you)
- Real estate (type of property and acres, location, year acquired, cost, owned by, market value)
- Personal property (livestock, motor vehicles, machinery, crop inventory, home furnishings, jewelry, art, antiques, personal items; describe cost and value and who owns)
- Liens against property (property mortgage, name of creditor, due date, remaining amount due from husband, wife, jointly)
- Mortgages and other real estate debts (description, name of creditor, date due, and amount remaining to be paid by husband, wife, jointly, whether insured)
- Other personal liabilities (unsecured notes, insurance loans, notes endorsed, real estate taxes, personal property taxes, state income taxes, federal taxes (including income, gifts, etc.), unsettled claims, name of creditor, due date, amount remaining to be paid by husband, wife, jointly, and which debts are insured by credit life insurance)
- Retirement benefits (pensions, profit sharing, deferred compensation, social security, annual benefits for husband and wife, amount invested, and death benefits)
- Other financial information (income last year, current income, salary, retirement income, annuities, rents, interest, bonuses, dividends, trusts, capital gains)
- Where are your special papers kept? Make a list and name exact location—husband's and wife's wills, deeds, insurance policies, stock and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnership and corporation agreements, profit sharing plan, divorce decrees, pre- and post-nuptial agreements, employment contract, pension benefits.

Adapted from *What My Lawyer Should Know* by Neil E. Harl, Attorney at Law and Professor of Economics, Iowa State University.