



## Wills<sup>1</sup>

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All people, regardless of financial status, will have an estate when they die. Generally, an estate is a person's net worth in the eyes of the law. Assets of an estate include bank accounts, home, vehicles, investments, licenses, social media accounts, businesses, life insurance policies, retirement accounts, and other items owned by the person. An estate may also include mortgages and other debts.

An estate plan is an organized manner to distribute one's assets and liabilities after the person dies and provides instructions for end-of-life decision making. It often consists of several documents indicating how a person wants to distribute his or her estate, future operations of a business, and instructions for health care and end-of-life decision making. The documents commonly include:

- Last Will and Testament,
- Living Will,
- Healthcare Power of Attorney,
- Financial Power of Attorney, and
- Trust.

### What is a will?

A Last Will and Testament is the most important document in an estate plan. It is a set of instructions for the personal representative to follow when settling the estate of a person who has died (decedent). A will should identify when, how, and to whom one's assets should be

disposed of and how one's business affairs should be addressed, if applicable. In addition, a will might also name a guardian for minor or adult dependents. One's right to dispose of property as he or she chooses may be subject to laws that prevent the person from disinheritting a spouse and, in some cases, children.

A will does not govern the disposition of property controlled by beneficiary designations or by titling – property titled in joint names with rights of survivorship, payable on death accounts, life insurance, retirement plans and accounts, and employee death benefits. These assets pass automatically at death to another person, and the person's will is not applicable to them unless they are payable to his or her estate by the terms of the beneficiary designations.

A will commonly does not dispose of a person's personal property. A Personal Property Memorandum, or separate list, can be used to direct to whom specific items should be given. A memorandum can be written and rewritten at any time. It does not need to be signed, dated, and found with the person's will, but it does not need to be witnessed nor notarized.

### What are the primary types of wills?

Wills can be of various complexities and utilized to achieve a range of objectives. A will that provides for the outright distribution of assets is

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<sup>1</sup> The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

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sometimes called a simple will. Alternatively, a testamentary trust will creates one or more trusts upon the person's death.

Pour over wills leave probate assets to pre-existing (created during one's lifetime) inter vivos trusts (often referred to as revocable living trusts). The use of such trusts or those created by a will generally is to ensure continued property management, divorce and creditor protection, protection of an heir from his or her own irresponsibility, provisions for charities, or minimization of taxes.

### **What happens if a person dies without a will?**

If a person dies without a will (called intestate), Colorado law essentially writes the person's will. Typically, the distribution would be to the person's spouse and children or other family members. State law may or may not reflect the person's actual wishes, and some of the built-in protections may cause family disagreements. Further, administering an intestate estate can be complicated, may require significant court involvement, may be more costly than probate, and may not achieve the objectives you want from your estate.

### **Who can make a will?**

A person who makes a will must be at least 18 years of age, of sound mind, and must know what assets he or she has, his/her immediate family members, and to whom the assets and liabilities should be given.

### **How should a will be made?**

A will may be handwritten (referred to as "holographic") or typed. It must be signed and dated by the willmaker (or at the willmaker's direction). The will should be, but is not required to be in all states, witnessed by two uninterested parties or notarized by a Notary Public.

People are encouraged to work with an attorney to write their wills. Colorado generally recognizes holographic will, however such will are often found to be ambiguous or defective.

### **Can a will be changed or updated?**

A will may be amended or revoked at any time, provided the willmaker is mentally competent and not inappropriately influenced by another person.

Writing in new clauses or scratching out sections or an original will is generally discouraged because it can cause uncertainty as to the willmaker's intent. Rather, it should be amended with a codicil or replaced with a new will. A codicil is an amendment to a will and must be signed, dated, and witnessed the same as the will.

### **Who can a person disinherit?**

A person may give his or her assets to whomever he or she wishes. However, Colorado law provides protections for surviving spouses who are left out or disinherited in a will and children born after the will is executed and no provisions are made for them.

A person may choose to include in his or her will a clause reading "if any of my heirs contest my will, they are disinherited". However, it will only be effective if the heir does not have probable cause or good reason to contest the will. Such clauses should be used cautiously and with specific review of the law.

### **Summary**

A will provides for the distribution of certain property owned by a person at the time of his or her death. They may be very simple or very complex and utilized to achieve a wide range of family and tax objectives. Everyone should have a will, regardless of their financial status. A will is especially important for a person with minor children.

While a will may be handwritten or typed, it must be signed and dated. While it is not required that an attorney draft a person's will, sound legal advice is advised. The costs of having a will prepared generally are much less than the costs of contested probate cases or disputed cases after death.