

Wills Overview ©

By Tyronda M. Curry, Esq.
www.currylawoffices.com

If you own any property or goods, you have assets that must be distributed upon your death. If you have minor children, or if you have others for whom you are legally responsible, they will need a guardian if you become incapacitated or pass away. A will can accomplish both of these objectives.

A will is a document which provides the manner in which a person's property will be distributed after death. A parent can also nominate a guardian for their minor or disabled children in a will. A will must meet certain formal requirements in order to be valid. In Michigan, those requirements are:

- The person making the will (known as the testator) must be clearly identified in the document by their full name
- The testator must be at least 18 years of age
- The testator must be of sound mind and body
- The testator must sign the will, and the signature must be witnessed by two persons who must also sign the will (the witnesses should not be beneficiaries under the will)
- The will must be clearly legible
- If the testator has previously made a will that will be superseded by this one, the will must specifically say that

A will must be presented to the probate court for appointment of a personal representative and administration of the estate. At that point, the will becomes a matter of public record.

You can either draft your own will or you can hire an attorney to draft one for you. If you have a small estate you can probably make your own will. There are a number of self-help resources available, including www.speedylegaldocs.com. Keep in mind though that great care should be taken when drafting a will on your own. Your will must follow all legal requirements in order to be valid. If you have a mid- to large-sized estate, it may be best to hire an attorney to draft your will. The will will act in conjunction with other estate planning documents. The attorney will draft your will based on the information you provide during the consultation, so it is important to be truthful and thorough.

If you need to make changes to your will, you can execute a new will which revokes or replaces the prior will. Changes can also be made by executing a codicil, a document which makes an addition or amendment to an existing will. In order for the change to be effective, again you must follow certain legal requirements

Your will should be kept in a safe place, such as a home office, with a trusted relative or with your attorney. It is best not to keep your will in a safe deposit box which you solely own, because the box will be sealed upon your death requiring your loved ones to obtain a court order to gain access. In many Michigan counties, you can file your will with the local probate court for safekeeping. A nominal fee is charged this service.

Lastly, if you die without a will (what is known in the law as intestate), the state determines who will be your ultimate heirs and how your assets will be distributed. This distribution plan can be found in the state intestacy statute. The applicable state can be either the location of your legal residence or the state in which your assets are located. Similarly, if you have minor children and both parents are deceased, the court will determine who should serve as guardian of your children. In both instances, it is possible that someone you would not choose could inherit your assets or be chosen to care for your children. Making a will allows you, and not the courts, to be in control of your affairs.