



# Wills

*What you need to know about creating a Last Will and Testament*

## What is a Will?

A will is a legal document that governs the disposition of your probate assets at your death. In your will, you may designate in your who will receive specific assets or cash amounts, or you may elect to have all of your assets distributed to one individual, to a trust then in existence, or to a charity or organization. In addition, your will may create a trust known as a testamentary trust at your death to hold assets for the benefit of individual(s) or an organization. The Executor of your will is charged with marshaling your probate assets and coordinating the distribution of those assets pursuant to the terms of your will.

## Why Should You Have a Will?

A will allows you to choose the individuals or organizations that will receive your probate assets at your death. Without a will, your probate assets will be distributed pursuant to Washington law and may pass to individuals to whom you did not intend to give your assets. In addition, a will can prevent family arguments over who gets what and allows you to provide your family with your last wishes regarding the distribution of your probate assets.

## Basic Terms

Below is a list of terms that will help you understand the function of a will.

**Executor:** An individual needs to administer the terms of your will. This person is known as the executor. The



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executor has a fiduciary duty to follow the terms of your will.

**Probate Assets:** Probate assets are any assets that are subject to probate under Washington law. These assets are distributed pursuant to the terms of your will.

**Non-Probate Assets:** Non-probate assets pass pursuant to beneficiary designations. For example, your life insurance as a designated payee, your bank account has a pay-on-death designee, and your retirements have designated beneficiaries. Non-probate assets pass to the designated beneficiaries pursuant to those designations rather than

the terms of your will. You should consult with your estate planning attorney about the designations you have in place.

**Tangible Personal Property:** Your tangible personal property includes items such as jewelry, silver, art, sporting equipment, and sentimental items. Tangible personal property can be distributed pursuant to a written list signed by you. However, any tangible personal property you own at your death not included on such a list will either pass as a specific bequest (if indicated in your will), or with the residue (if no specific bequest is made).

**Beneficiary:** A beneficiary is any individual, organization, or even your pet that benefits from your will. For example, if you leave all of your probate assets to a single charity, then the charity is a beneficiary. Alternatively, if you leave all of your assets to your children, then each of your children would be a beneficiary. It is important to note that the term “beneficiary” is also used with regard to trusts, retirement accounts, and other financial products. A beneficiary of your will may not necessarily be a beneficiary of your trust or retirement accounts. You should consult with an estate planning attorney to coordinate these designations.

**Specific Bequest:** A specific bequest is a specific gift to a specific beneficiary or group of beneficiaries. For example, if your will provides, “My executor shall distribute my car to my sister, Jane Doe,” then you have made a specific bequest of your car to your sister Jane. If your will provides, “My executor shall distribute \$500 to each of my living children,” then you have made a specific bequest to each of your living children and each child will receive \$500. Specific bequests are the first distributions made from the probate assets after all liabilities and administrative fees have been paid. If the value of the remaining probate assets is not sufficient to satisfy your specific bequests, then the amounts distributed to the beneficiaries will change. For more information on how this adjustment is made, you should contact your estate planning attorney.

**Residue:** The Residue of your estate consists of any Probate Asset remaining after all of your Specific Bequests have been satisfied and all of your debts and liabilities have been paid. Similar to a Specific Bequest, the terms of your will dictate the individual(s) or organizations that will receive the Residue of your estate.

### **Creating Your Will**

Your will is a legal document that can be changed at any time prior to your death, so long as you have capacity. Your will should be prepared by a legal professional. The terms of your will dictate how your probate assets will be distributed after your death, and how your expenses, debts and liabilities (if any) will be paid.

### **Selecting an Executor**

Selecting an executor is a very personal decision and should be a trustworthy individual. You can designate more than one individual to serve as your executor and you should designate an alternate executor.

### **Maintaining Your Will**

Once your will is executed, it remains in effect until you revoke it or revise it. There are several ways to revoke a will and to revise it. You should consult with your estate planning attorney if you want to revoke or revise your current will. It is important to keep the original will in a safe place, such as a safe deposit box or a safe in your attorney’s office.

### **Revising Your Will**

You should review the terms of your will every five years, as well as any time a major change occurs to your family situation or your financial situation. For example, you should review your will to make sure the terms are consistent with your wishes at the birth of a child, death of a family member, incapacity of your spouse, or if a fiduciary appointed under your will is no longer willing to serve.

### **Fees and Costs Associated with Your Will**

The fees for drafting a will vary, depending on the terms of the will and whether or not testamentary trusts are established under the will. You should consult with your estate planning attorney on the estimated costs.

*This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.*

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