



Wills and Probate

This section answers basic questions about Wills, Will alternatives, and the probate process.

What is a Will and do I need one?

A Will is a legal document that states who you want to get your money and your property when you die. In Maine, anyone aged 18 or older who is of sound mind can make a Will. When you write your Will, you list all your property and who you want to give it to after you die (these people are called your beneficiaries). You may also designate your Personal Representative, the person who will carry out the wishes you specify in your Will and distribute your property. You can change your Will at any time so long as you are of sound mind. Otherwise, it's only final at your death.

A good Will can prevent family members and others from fighting about your property in probate court. Here's an example: Let's say you have a long-time unmarried partner and you have children from a previous relationship. If you pass away without a will, Maine law provides that your children would inherit your property and not your partner. This may or may not suit you. Even if you have lived with your long-term partner for many years, you are not considered married in Maine without a marriage license, and your partner would not be able to inherit from you. But, you have the power to change this if you have a Will.

If you want to make sure a certain person gets a special item such as jewelry, make a Will! If you want to leave money to a favorite charity, make a Will! If you want your close friend, not your only living relative, to have most of your money or property, make a Will!

What happens to my things if I die without a Will?

If you do not have a Will, state law will determine where your things go after you die. This can be a fairly complicated process if you have a large or "blended" family. It is a good idea to talk to an attorney to make sure your wishes are understood by those who need to know.

Do I need an attorney to draft my Will?

No, but it's risky to do it yourself. Laws are complex. This is especially true if you have a large or "blended" family or own real estate. An attorney can help make sure that your wishes are carried out after you die.

How do I get a Will?

It is best to have an attorney help you with a Will. Hiring an attorney to write a good Will might cost less than you think. You may already know an attorney who you can call to find out what it would cost for a Will. If you don't know any attorneys, you could ask your friends and family if they have worked with an attorney. You could also find an attorney by using the [Maine State Bar Association's Lawyer Referral Service](#). There is a \$35 fee for a referral which includes a thirty minute consultation with an attorney.

IMPORTANT NOTE: You might be thinking about using a "Do-it-Yourself" estate planning

software kit or a pre-printed Will form from an office supply store or an online form. **This is not a good idea.** If you cannot afford to hire an attorney to help you with a will, there is a low-cost will form called the Maine Statutory Will form that is available through Maine's sixteen Probate Courts (there is one Probate Court in each county). To find your local Probate Court, please visit their website.

You can also write your will yourself. This is called a Holographic Will. The Will must be written in your own handwriting and signed by you. No witnesses are needed. Though not necessary, it can be helpful to date the Holographic Will so your heirs will know which will is the most recent if you make a new will later.

Important Note: If you are being pressured by someone to get a will or to change your will, it is important that you talk to an attorney for help.

If you feel pressured to get a will or to change your will, please call Legal Services for Maine Elders at 1-800-750-5353 and talk to an attorney for free.

Who makes sure that my Will is followed?

When you make a Will, you name the person who you want to take charge of your property after you die. This person is called the Executor or Personal Representative (PR). The PR finds and reads your original Will. You will want to have the original will somewhere the PR can find easily and quickly. They decide whether the Will needs to be "probated," a process by which a probate court reviews the Will and makes sure the directions in the Will are followed.

If you own very little property when you die, the PR can most likely give it to the people you name in your Will without going to probate court. If you own a good amount of property, the PR sends the original Will to the probate court. They ask to be "appointed" by the court as PR. Your family is notified about this request, and if no one objects, the court gives them the authority to act as PR. The PR may also pay any bills left at your death if there is money to do so.

If I have a Will and it goes to probate, what will happen?

Normally, it does not take long or cost a lot to probate a Will in Maine. Many people go through this process without an attorney. The probate court simply makes sure everything is in order, and the Will is followed. Sometimes, people listed in the Will object to the way things are being handled. Often, it has little to do with the value of the property being probated. The probate judge will settle these disputes.

Are there ways other than a Will to pass my property to others?

It depends on the type of property. Some property cannot be passed to others without a Will, and it is hard to know if you have taken care of everything without a Will.

An attorney can help you decide if you need a Will or can advise you on the best way to transfer property without a Will. **Keep in mind that transferring property, with or without a Will, can be risky. Your MaineCare eligibility can be impacted by property transfers and gifts. Also, it can create unintended consequences for the people receiving the property.** An attorney can help you understand your options and plan for the future.

Resources

Legal Services for Maine Elders

If you are a Maine resident who is 60 or older and you have questions about the probate process or if you are being pressured by someone to get a will or to change your will, call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to speak to an attorney for free.

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