

## WHAT IS A WILL

A **will** is a written document that gives instructions on how you want your property distributed when you die. The property that you own at your death is often referred to as your **estate**.

## WHY DO I NEED A WILL?

- A will is the only way to be sure that your property will be distributed to the person(s) you choose.
- It allows you to leave specific property to persons whom you choose.
- You can name the person you want to handle the distribution of your property (your executor) in your will; otherwise a court will determine who handles your estate.
- A will makes the distribution of your estate quicker and easier, which makes it easier for your family.

## WHAT IF I DIE WITHOUT A WILL?

The property of a person who dies without a will is distributed according to current Virginia law in the following order:

1. Your estate will usually go to your spouse, unless you are survived by any of your children (or their descendants) who are not your surviving spouse's children. In that situation, your spouse would receive 1/3 of your estate and your children/their descendants would receive 2/3.
2. If you do not have a surviving spouse, the entire estate will go to your children or their descendants.
3. If you have no surviving spouse, children, or descendants, your estate will go to your mother and/or father.
4. Distant relatives may receive your property if none of your immediate family survives you.

## DO I NEED A LAWYER TO WRITE MY WILL?

It is highly recommended that a lawyer be used in preparing your will. A lawyer will know how to write it so that it will be clear what you want done with your property, and will be able to comply with all the formalities necessary for the will to be valid.

Your will must be signed by you and by two witnesses. You should also have your will notarized in order to ensure that your signatures are deemed valid after your death.

## RIGHTS OF YOUR SPOUSE

Regardless of the share given to a surviving spouse in a will, a spouse has a right to claim at least one-third of the estate, if there are no surviving children.

## **WHERE SHOULD I KEEP MY WILL?**

A court usually requires your original will before it can process your estate, so it's important to keep the document safe, yet accessible. Many people choose to keep it in a safe in their home. Virginia allows a bank to permit certain people to look in a safety deposit box for the sole purpose of finding a will. Your attorney or someone you trust should also keep signed copies in case the original is destroyed.

## **CAN I CHANGE OR REVOKE MY WILL?**

Your will does not become effective until your death. Therefore, you can change or revoke your will at any time. Your will is valid until you revoke it. Revocation typically occurs either by physically destroying it or by signing a later will or written revocation. Do not write on your will after it has been signed by you and your witnesses because that may revoke it. Your lawyer should make changes for you. You

should also review your will periodically to determine if you want to make any changes.

Virginia law also allows you to create a separate writing identifying people whom you want to leave tangible personal property to (for example, furniture, jewelry, or pictures). You can include that separate writing in the will simply by referring to it in the will. You can then change this separate writing after the will is written without having to change the entire will.

**This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.**

If you have a specific question, please consult Legal Aid Works<sup>SM</sup> at:

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Suite 100  
Fredericksburg, VA 22401  
Telephone: (540) 371-1105  
Fax: (540) 371-1114  
[www.LegalAidWorks.org](http://www.LegalAidWorks.org)



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