

## SENIOR INFORMATION & ASSISTANCE

Northwest Regional Council  
600 Lakeway Drive, Suite 100  
Bellingham, WA 98225  
(360) 738-2500  
www.nwrcwa.org

Northwest Regional Council  
1650 Port Drive  
Burlington, WA 98233  
(360) 428-1301  
www.nwrcwa.org

---

### Wills

---

#### What is a will?

A will is a written legal document that says who will receive your property, and in what proportions. It can be used to name a guardian for minor children, or to create a trust. A will can also name a personal representative (executor) to handle your affairs from the time of death until your estate is settled.

#### Who needs a will?

Anyone who owns personal property (like cash, stocks, jewelry or furniture) or real estate should plan and prepare a will. If married, each spouse should have a will.

#### Where should a will be kept?

The original, signed copy should be kept in a safe protected place (such as a safe deposit vault), yet readily accessible when needed. Arrangements should be made for the will to be immediately available to the decedent's survivors. You should also have a duplicate of the will that reveals the location of the original.

#### What happens if a person has no will?

When there is no valid will, a person is said to have died **intestate**. The court appoints an administrator to handle affairs and the person's property is distributed according to a formula fixed by rigid and specific laws of descent and distribution. These laws generally allow no exceptions for those in unusual need.

#### What are the requirements of a valid will?

1) The will must be written, dated and signed. 2) The person who makes a will must be legally competent, acting voluntarily and at least 18 years of age. 3) The signing of the document must be witnessed by at least two legally competent individuals and signed in the presence of a notary. Witnesses do not need to know the contents of your will. Handwritten ("holographic") wills need to be properly witnessed or they are invalid in Washington.

#### How long is a will "good"? Can a will be changed?

A will is valid until legally revoked or changed, and becomes "final" (effective) upon its maker's death. Divorce automatically revokes a will as to the former spouse unless it provides otherwise. A will should be modified to reflect changes in circumstances, personal choices or resources. Changes are often made by a simple document called a **codicil** (which is a supplement, addition or postscript to the will), or by redrafting the will. A will may be revoked at any time prior to death. You should consider consulting a lawyer when changing your will.

**What is an “executor” or “personal representative”?**

An executor or personal representative is responsible for settling your financial affairs and disposing of your property according to the provisions in the will. This includes assembling, inventorying and distributing property according to the will, paying debts, expenses and taxes, and submitting a final accounting to the beneficiaries and probate court. Your personal representative should be competent and willing to serve and an alternate representative should be designated to fill this role if the designated one is unable to serve in this capacity.

**May a person use a will to dispose of property in any way desired?**

In general, yes. It may be advisable to specify percentages rather than dollar amounts for most or all bequests. A will only controls the disposition of your separate property, and one-half of any community property. The will has no control over the disposition of assets which do not pass through probate. Be careful that nonprobate assets, such as pension benefits, life insurance or those held in joint tenancy with rights of survivorship, are transferred as you wish.

Children may be disinherited as long as certain guidelines are followed. Each child should be named in the will to prove they have not been “forgotten”. The statement, “I have intentionally made no provision for my child, (name),” may also be included in the document. You may wish to apply other restrictions and these can be explained by a lawyer.

**What is a letter of instruction?**

A letter of instruction contains numbers for bank accounts, insurance policies, credit cards and other financial details. It may also contain instructions for burial, cremation, or anatomical gifts. This letter, or list of instructions, should be given to your executor or to your lawyer. Because this letter may function as a plan for handling pertinent estate matters, it should be as complete as possible.

**Does a will eliminate the necessity for probate?**

No, although a will may simplify matters and save expenses related to the probate process. The will has nothing to do with determining the necessity or the desirability of probate. Consultation with a lawyer may help you decide what is most appropriate for your situation.

**What does “joint tenancy with right of survivorship” mean?**

Property owned in joint tenancy is transferred automatically at death to the other surviving joint owner(s). If there is no other surviving joint owner, the property will be disposed of under the last joint owner’s will. Joint tenancy property is a nonprobate asset and therefore not subject to probate proceedings, nor does a will control its disposition so long as there is a survivor. This type of ownership may not be an adequate substitute for a will.

**What is the difference between “separate property” and “community property”?**

In general, community property includes everything acquired by a husband and wife during marriage through their own efforts. Separate property is obtained prior to mar-

riage, or prior to becoming residents of a community property state. The income earned on separate property is separate so long as it is not co-mingled. If property is co-mingled, it is presumed to be community property.

### **What are community property agreements?**

A community property agreement is a contract between a husband and wife that fixes the status and disposition of property upon the death of either spouse. It cannot convey or dispose of property when there is no surviving spouse; so each spouse should also prepare a will. A community property agreement, unlike a will, is not probated, although certain legal steps are required to clear title authorities and to transfer property.

### **Is making a will expensive?**

Considering its importance, the cost of making a will is modest. A properly drawn will should reduce expenses (and in some cases, taxes) while simplifying the administration of an estate. You can facilitate the process - and help control costs - by preparing an inventory of your assets and listing your various bank accounts, stocks and bonds, insurance policies, retirement and pension plans.

Fees for preparing a will and drafting necessary documents depend on a lawyer's experience, the complexity of the situation, and the amount of time spent counseling clients and preparing documents. Approximate costs should be discussed when first consulting a lawyer.

### **Who should draft a will or codicil?**

Drafting a will is a critical matter that requires special knowledge and informed decision-making, as well as coordination with other estate planning documents. A lawyer can assist and advise by analyzing individual circumstances and preferences, drafting valid documents, and avoiding pitfalls that alter intent.

**Much of this information was obtained from publications of the Washington State Bar Association.**

**The information contained in this handout is general in nature and should not be considered specific legal advice. More information is available online at**

**<http://www.wsba.org/media/publications/pamphlets/wills.htm>.**

**You should consult an attorney if you have specific legal questions.**