

The Importance of Having a Will



What is a Will?

A will is a legal document that states who you want to get your money and your property when you die. If you die without a will, Maine law will decide who gets your property.

When you create a will, you sign it in front of two witnesses who sign it as well. You can change it at any time. 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 been married twice and your children are from your first marriage. According to Maine law, your second husband would have a right only to the first \$50,000 and one-half of your remaining property. Your children would have the right to the other half of your remaining property. This may or may not suit you. But, you only have the power to change this if you have a will.

Who Will Make Sure That My Wishes Are Carried Out?

When you make a will, you name the person whom you want to take charge of your property after you die. This person is called the executor or P.R. (Personal Representative). The P.R. finds and reads your original will. She then determines

whether the will needs to be "probated." This means a Probate court reviews the will to make sure the directions in the will are followed.

If you pass away owning property worth less than \$10,000 the PR may give it to the people you name in your will without going to Probate Court by using an "Affidavit for Collection of Personal Property in Small Estates." (See 18-A MRSA § 3-1201) If you pass away owning more than \$10,000 worth of property, the PR sends the original will to the probate court. She asks to be "appointed" by the court as PR. Heirs are notified about this request. If no one objects, the court gives her authority to act as PR. The PR may also pay any bills left at your death if there is money to do so.

What if I have a Power of Attorney?

If you have a Power of Attorney document, your agent's power is only effective during your lifetime. When you die, your agent no longer has any authority to act on your behalf or to manage/dispose of your property.

In Maine, most of the time, probate takes little time and is not expensive. 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 pro-



Free legal help for Maine's seniors

www.mainelse.org

erty being probated. Sometimes people argue about simple things. This happens with or without a will.

So, 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!

Are There Ways to Pass My Property Without a Will?

There are ways other than a will to pass your property to others. Here are two examples:

1. **Name a loved one as a beneficiary on a life insurance policy.** When you die, that person gets a check from the company. No will is needed.
2. **Give another person an interest in your property as a joint tenant while you're alive.** When you die, that person will own the whole interest in the property. No will is needed. Note that this includes monies that are in a joint checking account.

It is, however, hard to know if you've taken care of everything without a will. And, some property cannot be passed to others without a will.

Please note that a MaineCare ineligibility period could be triggered, and you should check with an attorney before making such a transfer.



Do I Need a Lawyer to Make a Will?

You do not need a lawyer to make a will for you, but it's more risky to do it yourself. Laws are complex. This is especially true if you have a big or "blended" family. Some people write their own wills using the Maine Statutory Will Form. This is a fill-in-the-blank form you can get from the Probate court in your county for a nominal fee. Legal Services for the Elderly does not recommend this form to most people who have real property or sizable assets.

If you wonder whether you need a will, or if you have other questions, call Legal Services for the Elderly to talk to a lawyer at no cost. We may be able to refer you to a private lawyer who can prepare a will for you at a reduced fee. A good will may be less expensive than you think.

For more information, call the Legal Services for the Elderly Helpline for free legal advice.

LSE Helpline
1-800-750-5353



 **Legal Services for the Elderly**
Free legal help for Maine's seniors

