

# Probate FAQs

## What is a Will?

A document by which a person directs his or her estate to be distributed upon death (Black's Law Dictionary).

## What is a Codicil?

A supplement or addition to a will, not necessarily disposing of the entire estate but modifying, explaining, or otherwise qualifying the Will in some way. When admitted to probate, the codicil becomes a part of the Will.

## When should a Will be changed?

A Will should be reviewed if:

- you get married or divorced
- you move to another state
- the person named in your will as Personal Representative has died.
- a person named in your will to receive property has died
- you change your mind about the provisions in your Will

## What is a Living Will?

An instrument, signed with the formalities necessary for a will, by which a person states the intention to refuse medical treatment and to release healthcare providers from all liability if the person becomes both terminally ill and unable to communicate such a refusal (Black's Law Dictionary).

## Where should I keep my Will?

You should keep the original Will document in a safe place where it will be easy to find after you die. It is a good idea to tell some one where to find your important papers in the event of your death. It is not a good idea to make copies of your will.

Some helpful suggestions:

- Keep in a fireproof safe at home , or
- Put in a SAFE DEPOSIT BOX at a financial institution. When putting your will in a safe deposit box you need to list additional persons that you would like to access your safe deposit box to withdraw your Will for the purpose of distribution of your estate. If you do not have anyone listed on the safe deposit account they will not be able to withdraw the will without a COURT ORDER from the court.

## What does it mean when it says someone died intestate?

INTESTATE is one who has died without a valid will.

## What does the term Probate mean?

PROBATE is a process of distributing someone's property after his or her death. It provides an orderly way to transfer real and personal property. The probate process may be used whether someone has left a will or not. Probate of an estate without a will requires more court intervention.

## What does the term Testator mean?

TESTATOR is a person who dies leaving a Will.

## What does the term Distributee mean?

A DISTRIBUTEE is a beneficiary entitled to payment. An heir, one who obtains personal property from the estate of an intestate decedent.

## When can an estate be filed as a small estate (without need to have a representative appointed)?

The distributees of the estate of a decedent who dies intestate are entitled to file a Small Estate if assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, exclusive of liabilities secured by homestead and exempt property. In such case the distributees can file the Small Estate when:

- No petition for the appointment of a personal representative is pending or has been granted; and
- Thirty days have elapsed since the death of the decedent; and
- The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000; and
- There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses, by all such distributees that have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or the guardian of any other incapacitated person who is also a distributee, which affidavit shall be examined by the judge of the court having jurisdiction and venue; and
- The affidavit shows the existence of the foregoing conditions and includes a list of all of the known assets and liabilities of the estate, the names and addresses of the distributees, and the relevant family history facts concerning heirship that show the distributees' rights to receive the money or property of the estate or to have such evidences of money, property, or other rights of the estate as are found to exist transferred to them as heirs or assignees; and
- The judge, in the judge's discretion, finds that the affidavit conforms to the terms of this section and approves the affidavits; and

- A copy of the affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property, or other right belonging to the estate.

#### **Do I need an attorney to probate a Will?**

You can probate a will without an attorney **as long as you can properly represent yourself in court in front of the judge and are aware of the proper paperwork to file** before and after the hearing with the judge.

#### **Is it necessary to go through probate court if the estate only consists of life insurance or death benefits to be paid out?**

If the estate only consists of Life Insurance or Death Benefits to be paid out, usually you do not have to go through Probate court. Life Insurance and other death benefits are usually paid directly to beneficiaries named by the decedent.

#### **What is the purpose of a guardianship?**

A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

#### **What is a Guardian?**

One who has the legal authority and duty to care for another's person or property, because of the other's infancy, incapacity, or disability. A guardian may be appointed either for all purposes or for specific purposes.

#### **What is a Guardian Ad Litem?**

A guardian, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.

#### **What is an incapacitated person?**

A person who is impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability.

#### **What is a Power of Attorney?**

A Power of Attorney is a written document by which a person legally delegates to someone else a part or all of his/her authority to make legal decisions on certain matters on a short or long-term basis.

#### **Can a guardian be appointed to handle the estate and person?**

Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another of the estate, if it is in the best interest of the ward. There may be exceptions that allow husband and wife to serve as co-guardians.

#### **When would a Successor Guardian need to be appointed?**

If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a Successor Guardian. A Successor Guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

#### **When filing a guardianship, will a guardian be required to post a bond?**

- A guardian of the person or of the estate of a ward is required to give bond, EXCEPT:

- A bond is not required to be given by a guardian that is:  
a corporate fiduciary or  
a guardianship program operated by a county

- When a will that is made by a surviving parent and is probated in a court in this state or a written declaration that is made by a surviving parent directs that the guardian appointed in the will or declaration serve without bond, the court finding that the person is qualified shall issue letters of guardianship of the person to the person named to be appointed guardian in the will or declaration without requirement of a bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or declaration directs the court to waive the bond.