

What happens if there is no will?

If a person dies without a will, he or she is said to have died “intestate.” When this happens, Colorado law essentially writes the person’s will for them through a set of statutes that dictate who is entitled to what, who has priority to be the personal representative, and other terms and procedures related to estate administration.

Administering an intestate estate can be complicated and may require significant court involvement. It is generally more expensive than filing a probate action with a will, and does not provide the possible protections for the heirs as a testamentary trust can for the beneficiaries.

For additional information regarding the probate process (with or without a will) please review the following three brochures:

- Probate in Colorado
- What to do When Someone Dies
- So Now You Are a Personal Representative

(Updated January 2012) This pamphlet is published as a public service by the Colorado Bar Association. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case. For further information visit www.courts.state.co.us or coloradolegalservices.org.



Wills in Colorado

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WILLS IN COLORADO

A will is the most common estate planning document that all individuals should create regardless of their financial status. A will is a set of instructions that directs the personal representative to follow to settle your estate when you die identifying when, how, and to whom your assets should be disposed of and your business affairs should be addressed, if applicable. In addition, a will is a helpful tool to name a guardian for minor or disabled adult child(ren).

Who can make a will?

A willmaker must be at least 18 years old, of sound mind, and must know what assets they have, who their immediate family members are, and who they want their assets to be given to. When preparing a will, named individuals, charitable organizations, etc. are considered a devisee.

How should a will be done?

A will may be handwritten referred to as “holographic” or typed, and it must be signed and dated by the willmaker (or at the willmaker’s direction). The will must be witnessed by two uninterested parties or notarized by a Notary Public authorized to take acknowledgments. It is best to have both witnesses and a notarized acknowledgment present when you sign your will.

You are strongly encouraged to work with an attorney to write your will, as drafting a will requires special skills. Colorado generally recognizes holographic wills however such wills are frequently found to be ambiguous or defective, causing delay, expense, and possibly litigation.

Does a will dispose of all assets?

There are certain types of assets that are not governed or distributed per the terms of a will. Only assets that are owned by you in your individual name and that do not have a beneficiary designation are controlled by the will. Therefore it is important to consider how you own your assets when doing your estate planning. Assets that are owned in joint tenancy, such as real property or a bank account, or assets that have a beneficiary designation

like a life insurance policy or IRA, pass to the beneficiaries by operation of law, and are not subject to the provisions in the will or the probate process.

A will may not dispose of all your assets for other reasons, including if you make a Personal Property Memorandum, or a separate list, directing where specific items of personal property are to go. The memorandum is usually handwritten or typed, and can then be written or rewritten at any time. It does not need to be witnessed or notarized, only signed, dated and found with your will.

Can I change my will?

A will may be amended or revoked at any time, provided you are mentally competent and not inappropriately influenced by another person. An amendment to a will is called a codicil, and it must be signed, dated, and witnessed just like the original will. You should never write directly on your original will, but instead should execute a codicil or an entirely new will. Writing in new clauses or scratching out sections creates uncertainty as to your intent and will likely result in increased court involvement and possible litigation.

When should I update my will?

After you execute your will there will be changes in your life, your devisees’ lives, state and federal tax laws, and your attorney’s experience. Therefore, you should have your will reviewed periodically, and you should keep in contact with your attorney.

In addition, if you moved to Colorado or move to another state, it is prudent to have your will reviewed. While Colorado law recognizes wills from other states that were validly executed in that state, there are other factors that could affect your will, including community property issues, differing rules about the disposition of personal property, and local rules regarding spousal and dependents’ rights.

What happens to my will if I get divorced or married?

Under Colorado law, if you get divorced after you execute your will, your ex-spouse, if named in your will, is automatically eliminated as a devisee when

the divorce is final. If you get married after you execute your will, your spouse is entitled to the same share he or she would receive if you died without a will.

Can I save taxes by using a will?

A properly drafted will may avoid or lessen estate taxes. Not all estates will have estate taxes, and it is a common misunderstanding that avoiding probate saves estate taxes. Probate and estate taxes are separate matters. Probate is the process for passing the title of assets. The requirements for filing federal and Colorado estate tax returns are based on the total value of the assets at the time of death.

Can I control how my devisees inherit my property?

You may direct how and when a devisee receives their inheritance, for example outright or in a trust. A trust established under a will is called a testamentary trust, and may provide significant protection for the beneficiary. The trust terms may prevent access by the beneficiary’s creditors, set out the terms and reasons that a beneficiary may receive a distribution from the trust assets, and prevent disqualification from public benefit programs. This is a sophisticated technique and you are encouraged to consult an attorney.

Who can I disinherit?

You may give your assets to whomever you wish. However, Colorado law provides protections for surviving spouses who are left out or disinherited in a will, and children of the decedent who were born after the will was executed and no provisions were made for them. A surviving spouse may elect to receive a percentage of the decedent’s estate regardless of what the will says, unless a valid prenuptial agreement says otherwise. Similarly, unless expressly excluded, children born after a decedent’s will is executed may inherit the share they would be entitled to if the decedent died without a will.

You may choose to have a clause that says if any of your heirs contest the will they are disinherited, but it will only be effective if the heir does not have probable cause, or good reason, to contest the will.