

# *legal* links

## **YOUR WILL**

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## What is a will?

A *will* is a set of instructions that explains how you want your property distributed after your death. In Oregon, you must be at least 18 years old and of sound mind to make a will. If you are married, you can make a will before you turn 18 years old. Your will must be in writing and must be signed by you and at least two witnesses. The witnesses must also have seen each other witness your will. It is important to make sure these requirements are carefully observed.

## What are the benefits of a will?

A will allows you to decide how your estate will be distributed or managed after you die. It lets your wishes be heard regarding the care of minor children. It often prevents disputes among heirs and relatives. In a large estate, a will can also reduce the amount of taxes that may be due at your death.

## Is a will expensive?

No. A simple will is not expensive. However, the cost of any will depends on how much work your lawyer does for you. As wills become more complicated, the cost rises. Ask your lawyer for an estimate of the cost. In general, the trouble and expense of not having a will far outweigh the cost of the will.

## Is a will from another state valid?

Yes. Generally, if you made a will in another state according to the laws of that state, it is valid in Oregon also. This is also true if you created a trust in another state (see section on trusts.)

## Who should draft a will?

A will is an important legal document that can have a significant impact on your family. A lawyer can give you good advice on how the will should be prepared and executed. Having a lawyer draft your will may give you the assurance that your will accomplishes your goals for distributing your property.

## Can a will be changed?

You can change your will at any time as long as you are of sound mind. You may want to change your will for many reasons, such as marriage, divorce, birth of children, or an increase in your assets.

## Can I leave nothing to my spouse?

Not really. Oregon law allows the spouse of a deceased person to “elect against the will.” This means that your spouse gets a portion of your estate regardless of what your will says.

## Can I leave nothing to my children?

Yes. A parent is not legally required to leave any property to his or her child.

## Does a will avoid probate?

No. Whether or not you have a will does not determine if your estate needs to go through the *probate* process. If you own property in your name alone, at your death probate is necessary to transfer that property to the person named in your will. If you don't have a will, the probate process transfers your property to the people entitled to receive it according to Oregon law. A will can reduce the cost of probate.

## How much property requires having a will?

The amount of property you own does not determine whether you need a will. Your personal and financial circumstances determine when and how a will should be drafted. For example, it is important for new parents to have a will to provide for their children even if they own little personal or real property.

## Can a will help avoid estate taxes?

Yes. If your estate is taxable, meaning it is greater than \$675,000, a will may be part of an estate plan that reduces or eliminates estate taxes. (\$675,000 is current for the years 2000 and 2001.)

## Who will manage my estate?

If your estate needs management, a *personal representative* (executor) will be appointed by the court. Having a will lets you decide who that person will be. You may choose someone familiar with your property and affairs, or a professional that can serve as a personal representative. If you think there may be hard feelings in your family or your estate has complications such as children from a previous marriage, you may want to name a professional trustee. Many banks and trust companies have experienced people to handle the difficult task of being a personal representative.

## What happens if I do not have a will?

If you do not have a will, and if you have probate property, your property will be distributed according to instructions made by the Oregon legislature. This may not be what you would decide if you had your own will. For example, if you are married and don't have children, property that is in your name alone will go to your spouse. This is also true if you are married and have children that are born of your current marriage. If you are married and have children from a prior marriage, half of your property will go your spouse. The other half will go to all of your children, whether or not of the prior marriage. If you have a child under the age of 18, the court may choose someone to take care of the property for that child. If you do not have a will or any family that would be entitled to your property, your property (which is in your name only) may go to the State of Oregon. Your family (heirs) includes a large category of relatives: spouse, children, grandchildren, parents, siblings, grandparents, nieces, nephews and cousins.

## What is a trust?

A *trust* is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints a trustee to manage your property and gives detailed instructions on how the property will be managed and distributed. A trust is one way to take care of a minor child, an elderly person or someone who needs help handling money. A trust may be established during your lifetime, and you may act as your own trustee, or it may be established by your will after your death. Trusts are generally more complicated to create than a will, and you may want to consider having an estate planning lawyer assist you.

## Can a living trust substitute for a will?

A properly drafted *living trust* can work well as a substitute for a will and sometimes may reduce the costs of handling your estate. However, even if you have a trust, most advisors would recommend you also have a will to cover the possibility that some of your assets may not be covered by the trust at the time of your death. Whether a living trust is proper for your estate is a decision to be made after receiving competent legal advice.

## Can joint accounts substitute for a will?

Not really. These are usually considered in order to avoid probate. Many spouses own real estate, bank accounts, stocks and bonds and other types of property as husband and wife with the right of survivorship. This means that if you die leaving your spouse, your jointly owned property passes automatically to your surviving spouse, regardless of what your will says. A life insurance policy determines who receives the benefits; not the will. Also, complications may result if you and your spouse rely on joint ownership and/or insurance instead of a will because they do not direct how your property will be distributed if you and your spouse die in a common accident. Therefore, joint ownership and life insurance are elements that may be combined for a coordinated estate plan that also includes a will.

## Should I consider a medical advance directive?

Yes. With a *medical advance directive*, you may address many of the medical decisions that are required if you become seriously ill. In addition, a medical advance directive allows you to choose a “health care representative” to make health care decisions on your behalf, if you become incapable of doing so.

## Estate Planning Topics on Tel-Law

The bar's Tel-Law Program provides a collection of free, general legal information recordings accessible to the public by phone. Recorded and available 24 hours-a-day, taped selections of general information span more than 100 different legal topics. Some recordings are offered in Spanish and Vietnamese. Tel-Law scripts are revised following each legislative session. Tel-Law pamphlets are free and list all recorded topics. To access Tel-Law recordings, call **503-620-3000** in Portland or **800-452-4776** elsewhere in Oregon. Tel-Law scripts are also available on the bar's web site.

The following is a list of estate planning topics you can find on Tel-Law:

- 800** Your Will
- 801** What is probate?
- 802** What taxes have to be paid if someone dies?
- 803** What is a trust?
- 804** What is a living will?
- 805** Estate planning for parents of the disabled
- 806** Powers of attorney and other decision-making tools

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*This pamphlet, based on Oregon law, is issued to inform, not to advise. It is not intended to apply to any specific situation.*

For more information contact us at

**[www.osbar.org](http://www.osbar.org)**

or P.O. Box 1689

Lake Oswego, Oregon 97035-0889



## Resources

*Lawyer Referral Service* (\$35 office consultation)  
*Modest Means Program* (application required)  
9:00 to 5:00 p.m. on weekdays. Spanish available.

**Portland: 503-684-3763**

**Elsewhere in Oregon: 800-452-7636**

### *Tel-Law*

Free, general legal information recordings. Some recordings are offered in Spanish, Russian and Vietnamese.

**Portland: 503-620-3000**

**Elsewhere in Oregon: 800-452-4776**

For a list of Tel-Law topics, write: Tel-Law, P.O. Box 1689, Lake Oswego, OR 97035-0889.

### *Legal Information Pamphlets*

Legal information pamphlets cover a variety of general legal topics. To order pamphlets, call the Oregon State Bar Order Desk.

**Portland: 503-620-0222, ext. 413**

**Elsewhere in Oregon: 800-452-8260, ext. 413.**

### *Legal Issues for Older Adults*

A comprehensive guide to legal issues important to senior citizens. Topics include health care, wills, housing, property management, age discrimination and much more. Information and resources provided in this publication can help older adults determine if professional legal assistance is necessary. 146 pages. Cost \$10.00 + postage.

To order, call the Oregon State Bar.

**Portland: 503-620-0222, ext. 413**

**Elsewhere in Oregon: 800-452-8260, ext. 413.**

### *Legal Aid*

Free legal assistance may be provided for low income clients with non-criminal cases. Legal Aid services depend on location, community legal needs, and availability of Legal Aid lawyers. Your local Legal Aid office phone number is available in the Community Service pages of the local phone book.

### *Oregon Senior and Disabled Services Division (SDSD)*

Human Resources Building  
500 Summer St. NE – 2nd Floor N  
Salem, OR 97310

**General Information: 503-945-5811  
or 800-232-3020**

Web site: [www.sdsd.hr.state.or.us](http://www.sdsd.hr.state.or.us)