

Estate Planning Part 5:

Wills and Probate in Kentucky

Nichole Huff, Family and Consumer Sciences

What Is a Will?

A will is a legal document that provides instructions to be carried out after your death.

Why Should You Have a Will?

Unless you have made other provisions, such as a trust, your will is the way to make certain that your property is transferred or disposed of according to your wishes.

Your will is also the document that allows you to designate who will be responsible for seeing that your wishes are carried out. This person is known as the *executor* of your estate.

If you fail to make a will or some other legal document for the transfer of your property, Kentucky law will determine how your assets are transferred.

If you take the time to prepare a legal will, it can save your estate money after your death, which means more assets will be available to pass on to your heirs. A legal will also saves time in settling your estate. In general, everything is easier and smoother for your heirs with a will.

Your will is also the document that is used to nominate a person to be appointed the guardian of your choice if you have minor children (children under 18). In most cases, the courts will appoint the person whom you nominated. The person you nominated may not be capable of being guardian because of their own death or mental incapacity. In those cases, the court would appoint another person to be your child's guardian. This happens most often when you name the grandparents as guardians and forget to update your will when they die or when they become mentally or physically unable to carry out guardian responsibilities.

Do not assume that your spouse will automatically be the guardian of your minor children. If you and your spouse die at the same time — as the result of a common accident, for example — neither of you would be available to be the children's guardian. It is good to name a guardian in case neither of you survives the other. Another good idea is to name a second, alternative guardian in the event your first choice of guardian dies or is unable to fulfill your request.



Without advance thought, planning, and the proper legal documentation, your estate could end up paying more money than necessary in taxes to the state and federal governments.

What Happens If I Die without a Valid Will?

If you die without a valid will, your estate is known as an *intestate* estate. In that case, the Kentucky laws of distribution would govern the distribution of your assets. The courts would also choose a guardian for your minor children and determine the executor of your estate. The court choices may or may not be your choices.

Under Kentucky law, if you die without a will, any property that passes through probate will be distributed as shown in figures 1 and 2. The results could leave your spouse and/or

Figure 1. Property distribution for a person *with a surviving spouse* who dies without a will in Kentucky.

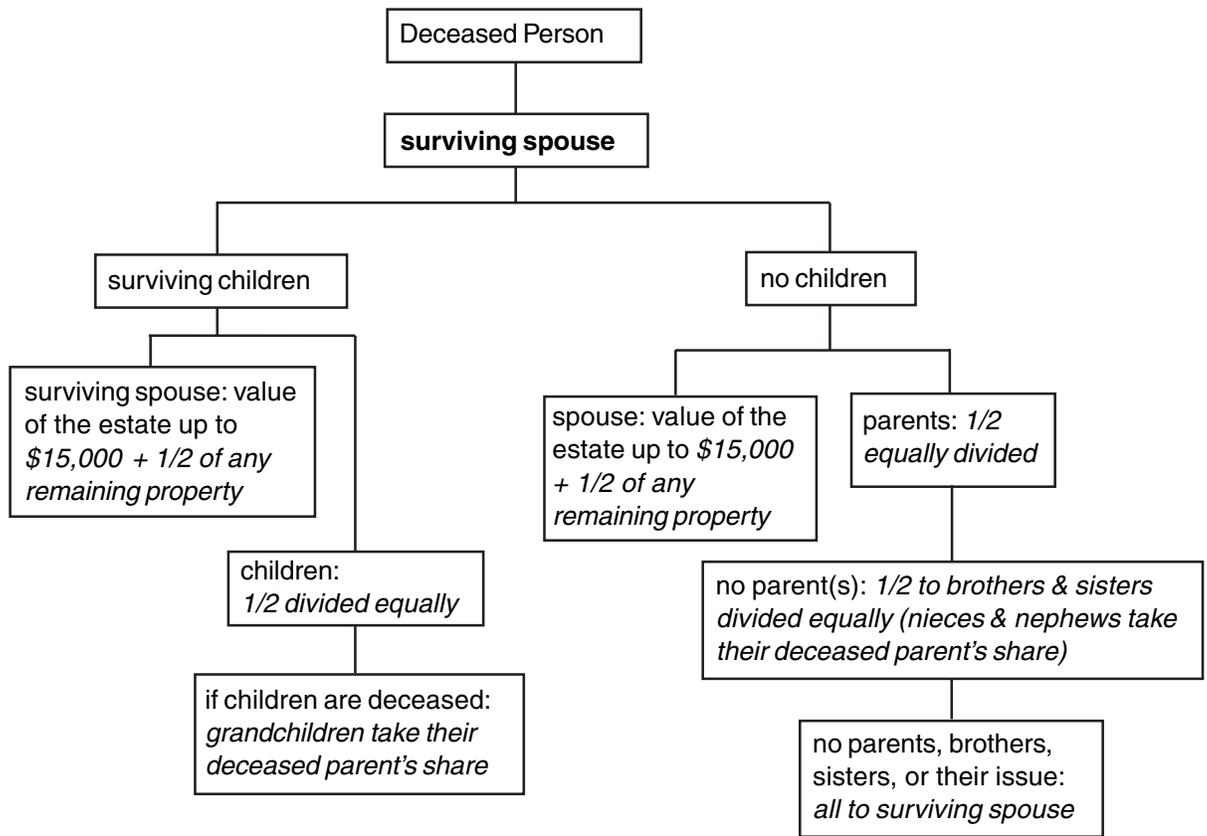
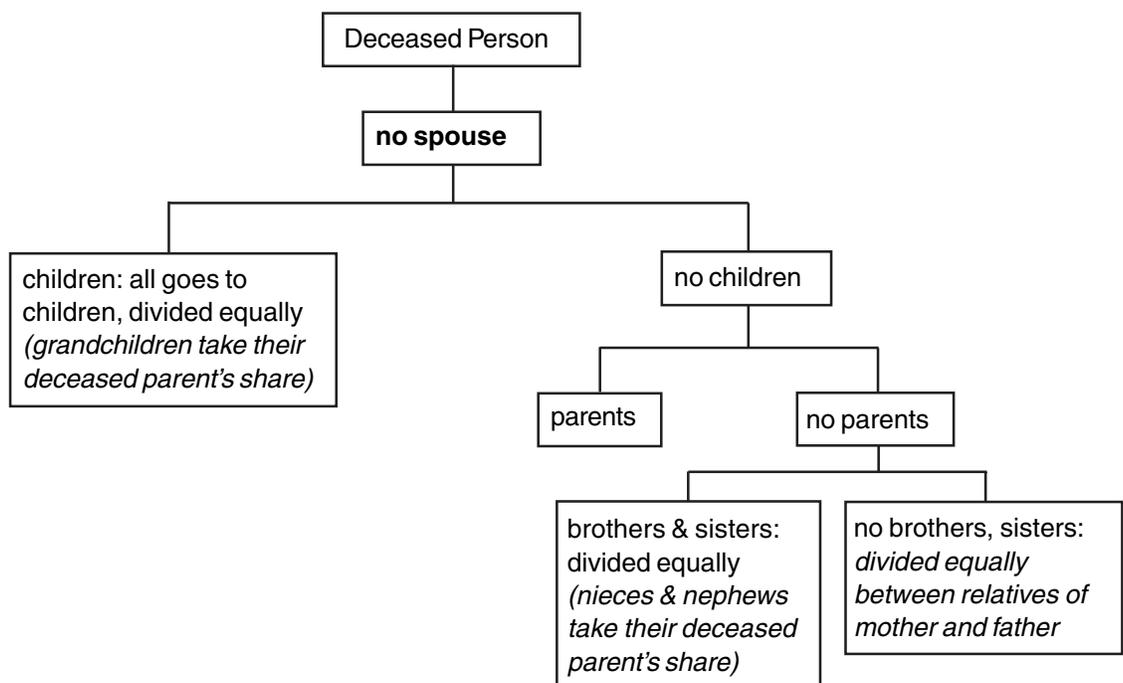


Figure 2. Property distribution for a person with *no spouse* who dies without a will in Kentucky.



children with few resources available to provide for their support and day-to-day living expenses.

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What Is a Valid Will?

In Kentucky you must be 18 years old to make a will. (However, parents who are under 18 may have a legal document designating a guardian for their child or children.)

The law also requires that the person making the will be of sound mind. The definition of *sound mind* is broadly interpreted. Basically, it means that the person knows:

- They are making a will
- The general nature of their property and how much property they have
- The names of descendants or other relatives who would ordinarily be expected to share in the estate

A Kentucky will must be signed by two witnesses. The witnesses cannot be people who are beneficiaries of the will or whose spouses are beneficiaries of the will. The wrong witnesses can make a will invalid and change the amount received by beneficiaries.

Can You Write Your Own Will?

In Kentucky you can write a will in your own handwriting. This type of will is known as a *holographic* will. If you make this kind of will, the entire will needs to be handwritten by you. It must be signed and dated by you as well. Under Kentucky law, you do not need any witnesses for a will made in your handwriting. However, after your death, someone will have to testify that they are familiar with your handwriting and that the will is in your handwriting.

Handwritten joint wills are invalid because they are written in more than one handwriting.

If you prepare your own will and type it, it must be signed by at least two witnesses. If you choose this method of making a will, be sure that you know what needs to be included to make it legal. Also be sure that the witnesses are valid witnesses.

It is a good idea to consult an attorney about any will you write yourself. The attorney can assist in making sure your will is legally admissible for probate. You should consult an attorney even if you have written a will for a small estate. An attorney can save money at the time of your death and also prevent problems for probate. An improperly handwritten will is invalid, and an estate under such a will would fall under the intestate laws for distribution.

What Assets Can Be Mentioned in a Will?

You can be as specific as you want in your will. However, most people keep their wills simple. Some of your assets, such as life insurance policies and pension funds, may already have a beneficiary named and therefore do not need to be mentioned in your will. Bank accounts that are held jointly with rights of survivorship also fall in this category.

Some people designate their estates as the beneficiary of their life insurance policies. In such cases, the policy proceeds would be included in the assets disposed of by the will. Under most circumstances, it is not good tax planning to make the estate the beneficiary of life insurance policies or pension funds. Check with your attorney about this when considering beneficiary selection.

It is a good idea to review who is designated as a beneficiary on your insurance policies and pension funds. Contact your insurance and pension representatives to find out. Companies can provide forms for changing the beneficiary. Often people fail to change the beneficiary when a spouse or other designated beneficiary dies. If you fail to keep the designated beneficiary updated, at the time of your death the assets could go to someone you no longer want to have them. You will also want to review your beneficiary designation in case of divorce.

Property and assets already placed in a trust are not always mentioned in a will because the beneficiary of a trust is designated by the trust document and does not come under the authority of a will. If the trust terminates at your death, the property of the trust should be mentioned in the will. If you have a trust already in place, clarify how it should be handled in relation to your will with the attorney who assists you in preparing your will and/or trust documents.

Can a Will Be Changed?

Yes. It is a good idea to review your will from time to time and make changes as necessary. Some events during your lifetime may invalidate your will and make it necessary to make changes in it. These events include:

- Marriage, remarriage, or divorce
- Birth of a child
- Move to another state
- Acquisition of additional assets
- Changes in federal and state laws

Some people choose to make amendments to the original will instead of rewriting the entire will. Your attorney can advise you on the best way to handle the changes you need to make in your will.

What Is the Cost of Preparing a Will?

Some attorneys charge a flat fee for preparing a will, and other attorneys have an hourly fee, with the charge based on the time it takes to advise you and prepare your will. When you first contact your attorney, ask what method they use to determine the cost of helping you.

If your attorney charges by the hour, find ways to reduce the time they need to spend with you. Do your homework before you visit the attorney to save yourself time and money. This means knowing your assets, liabilities, and estate goals before you go.

What Is Probate?

The word *probate* means to prove the will. In other words, it is the process of proving that the will of the deceased person is a valid or legal will. The probate process also includes the carrying out of the wishes of the deceased as specified by the will.

Are There Alternatives to Having a Will?

Many people choose to have a trust instead of a will. The details of trusts are provided in the publication *Estate Planning Part 6: Trusts* (FCS 5-426) in this series. Check with an attorney to determine if this alternative is an advantage for you.

Remember that a will takes effect at your death. It does not provide for the management of your assets and resources if you become disabled (by stroke, for example) and are unable to take care of your own business transactions while you are living. You need a durable or springing power of attorney for such situations.

The Estate Planning Series

This publication is part of a ten-part series on estate planning. The publications in this series are:

- Part 1: *Getting Started*
(FCS5-420)
- Part 2: *Your Records and Personal Information*
(FCS5-422)
- Part 3: *Selecting Your Team*
(FCS5-423)
- Part 4: *Financial Planners*
(FCS5-424)
- Part 5: *Wills and Probate in Kentucky*
(FCS5-425)
- Part 6: *Trusts*
(FCS5-426)
- Part 7: *Federal and State Estate Taxes*
(FCS5-427)
- Part 8: *Planning Your Digital Estate*
(FCS5-465)
- Part 9: *How to Settle an Estate*
(FCS5-436)
- Part 10: *A Glossary of Terms*
(FCS5-428)