

Why have a will?

A will has many planning advantages.

First, a will lets you choose who will get your property and how much each will get. If you do not have a will (intestacy), state law will distribute your property. If this happens, your property may not go to whom you want. Note that a will only distributes your property if you have not arranged for it to be distributed in some other way, such as in a trust or by naming someone as a joint owner or a beneficiary.

Second, a will lets you name who you want to carry out your wishes. This person is called the “executor” and should be a person you can trust. If you do not appoint an executor, the court can appoint someone. The executor does not need to have a business background or special legal knowledge. Your executor can hire a lawyer or accountant to help settle the estate. Your estate will pay for these services.

Third, a will can give special powers to your executor. Special powers can help save money. For example, special powers can allow the executor to take advantage of all possible tax breaks and allow the executor to act without first obtaining court approval.

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Nevada Legal Services

Nevada Legal Services, Inc. (NLS) is a non-profit organization providing free legal services to low income Nevadans. NLS is a state wide organization assisting every county in Nevada. We are funded through various sources but are primarily funded through a grant from the federal government by way of the Legal Services Corporation.

Since 1981, the staff of NLS has represented clients in federal courts, state courts, and in administrative hearings. The staff negotiates on behalf of our clients where possible to try to resolve matters without the need for litigation.

THIS INFORMATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. CONTACT AN ATTORNEY FOR SPECIFIC QUESTIONS.

PLEASE NOTE: Laws are subject to change. Information contained in this pamphlet is based on laws in effect at date of publication. 12/16

. If you have any specific questions, ask a lawyer.



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WILLS

NRS Chapter 133



The mission of Nevada Legal Services is to strengthen the community by ensuring fairness and providing equal access to justice for low-income Nevadans.

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What is a Will?

A will is a formal statement telling how to dispose of your property after you die. In addition to disposing of property, your will can contain other instructions. For example, a will may say who you want to care for your minor children.

The person writing the will is called the testator. Nothing happens under a will until you die. You can give away or sell your property at any time before death, even if the will says it goes to someone else. You can change or revoke your will during your life as long as you are mentally able.

Who can make a will?

Any person of full age and sound mind can make a will. To be of full age, you must either be more than eighteen (18) years old. NRS 133.020.

Generally, the factors that determine sound mind or mental capacity include, but will ultimately be decided by a Judge if a will is challenged.

- Knowledge and understanding of the nature and amount of property you own;
- An understanding and an ability to remember the people who are close to you and who may have a claim to property under your will;
- An understanding that you are making a will; and
- Freedom from any delusions or hallucinations

What if you do not have a will?

Many people do not have a will. If you die without a will, Nevada's "intestacy" laws apply to property included in your "estate." Your "estate" does not usually include jointly-owned property, property in a trust, or property for which you name a beneficiary. These laws are applied regardless of what your wishes may have been.

If you do not have a will, Nevada's intestacy laws would distribute your estate as follows.

Community property is all property acquired after marriage by either husband or wife, or both, unless otherwise provided by: An agreement in writing between the spouses. A decree of separate maintenance issued by a court of competent jurisdiction. A decree issued or agreement in writing. NRS 123.220.

- If you are married, then your spouse will receive all existing Community property. NRS 134.010; NRS 123.250.

Separate property is all property of the husband or wife owned by him or her before marriage, or that was acquired by him or her after marriage by gift, bequest, devise, descent or by an award for personal injury damages, with the rents, issues and profits thereof, is his or her separate property. NRS 123.130.



What happens to your separate property if you do not have a will?

The separate property of a person who dies without a will is distributed as follows:

If the person has a spouse and one child, each gets half. N.R.S. 134.040(1).

If the person has a spouse and two or more children, the spouse gets a third. The other two thirds go to the children in equal shares, except that if one of the children has died, but left descendants, the descendants take the dead child's share. N.R.S. 134.040(2).

If the person leaves a spouse, no descendants, and at least one parent, the spouse gets half and the other half goes equally to the two parents, or all to the surviving parent. N.R.S. 134.050(1).

If the person leaves no descendants or parents, but is survived a spouse and siblings (brothers and sisters), one half goes to the spouse and the other half goes in equal shares to the siblings. N.R.S. 134.050(2).

If the person leaves no spouse or descendants, everything goes to the parents or the survivor of them. N.R.S. 134.050(3).

If the person leaves a spouse, but no parents, descendants, or siblings, the spouse gets it all. N.R.S. 134.050(4).

If the person leaves no spouse, parents, or descendants, then it all goes to the siblings, or if a sibling has died to that sibling's children. N.R.S.134.060.

If you have children that are not your spouse's children, then your spouse will receive all of your exempt personal property, and one-half of all other real and other personal property. If this property does not equal at least \$50,000, then your spouse will receive additional property to make the spouse's share equal to at least \$50,000. The remaining property will be divided equally among your children. If a child has died, that child's children will receive the child's share.

If you have no spouse when you die, then all of your property will go to your children in equal shares. If a child has died, that child's children will share the child's share, and so on down the line.

If you have no descendants, then your estate goes to your parents. If you have no living parents, then the estate goes to your parent's closest descendants; i.e., first your siblings, then your nieces and nephews, etc. If there are no such relatives, then the estate goes to your grandparents and down from there. If you have none of these relatives, then your estate goes to the descendants of your deceased spouse.

If there are no such descendants, then your estate goes to the state of Nevada. NRS 134.110.

