

Georgia. However, if you have moved to Georgia from another state, it is a good idea to have your will reviewed by a practicing attorney in Georgia to ensure that it is valid under Georgia law and that its provisions will have the same intended effect if you die a resident of Georgia.

### What is probate?

Probate is the court-supervised process of administering a person's probate estate. The process includes validating the will (or making the determination that there is no valid will), appointing the person who will gather and manage the assets of the estate, paying claims against and expenses of the estate and distributing the assets of the estate to the beneficiaries.

### Should I try to avoid probate?

Georgia has a modern probate code and probate judges who have no interest in prolonging the probate process or closely supervising the administration of estates when it is not necessary. So probate in Georgia is generally not burdensome or expensive. The court costs are often limited to the initial filing and publication fees and are usually less than \$500. (Court costs do not include compensation to the executor or fees charged by attorneys or accountants for services provided to the estate.) So despite what you may read in advertisements warning of the burdens of probate, most Georgia residents are not well served by techniques that are designed to avoid probate, such as revocable living trusts. If you own real property in another state, it may be subject to probate in that state at your death, and you may want to avoid probate in that state by using a revocable living trust or some other technique.

### What is a living will?

A living will is not a will. It is a document authorized under the laws of many states that provides a person's directions on the withholding of life-sustaining medical procedures in the event of a terminal condition or a state of permanent unconsciousness. In Georgia, the document used for this purpose is called an advance directive for health care. For more information, you may want to read the State Bar of Georgia's pamphlet on advance directives for health care.

### What about estate taxes?

There is a federal tax on the transfer of estates of deceased citizens and residents of the United States. Beginning in 2009, the tax generally applies only to an estate with a value in excess of \$3.5 million, but the estate tax law is always changing. If you own or expect to own in the future property (including the death benefits of insurance on your life) with a total value of \$3.5 million or more, you should consult with a practicing attorney with experience in estate planning. A will is an important part of a properly structured estate plan to reduce the federal estate taxes that may be owed by your estate.



*This pamphlet was prepared by the Fiduciary Law Section of the State Bar of Georgia as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult a attorney. Any written advice contained in this pamphlet, however distributed, is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code and was not written for the purpose of promoting, marketing or recommending any entity, investment plan or other transaction.*

# Wills



**State Bar  
of Georgia**

State Bar of Georgia  
104 Marietta St. NW, Suite 100  
Atlanta, GA 30303-2743  
404-527-8700  
800-334-6865  
Fax 404-527-8717  
www.gabar.org

## Consumer Pamphlet Series

 State Bar  
of Georgia

## Foreword

This pamphlet explains what a will does and does not do, the requirements for a valid will and why every adult, regardless of wealth and family status, should have a valid will.

## What is a will?

A will is a legal document that directs how certain property that you own at the time of your death (called your probate estate) is distributed after your death. A will must be properly executed to be valid. Your will takes effect only upon your death.

## What property is distributed under a will?

Your will controls the distribution of your probate estate. Your probate estate consists of all property owned by you at the time of your death that is not distributed at the time of your death under the terms of a contract or by operation of law. Probate property includes your tangible possessions like clothing, jewelry, household furniture and furnishings, cars registered in your name, real estate titled in your name (or in your name and the name of some other person as tenants in common), bank accounts registered in your name with no pay-on-death designation, and stocks and bonds held in an account in your name with no transfer-on-death designation. Non-probate property—property that is not distributed under your will—includes life insurance with a death beneficiary designation, pension and retirement accounts (like IRAs and 401(k)s) with a death beneficiary designation, property owned by you and some other person as joint tenants with right of survivorship, and bank and brokerage accounts with pay-on-death or transfer-on-death designations. In most cases, a valid will cannot control who receives your non-probate property.

## Who can receive property under a will?

In your will, you may direct the distribution of your probate estate in any manner that is not contrary to Georgia law or public policy. You may leave your property to charitable organizations or even strangers to the complete exclusion of your spouse and children. Your surviving spouse and minor children will, however, be entitled to property from your estate for their support and maintenance for a period of 12 months.

## Who needs a will?

Every adult should have a properly drafted and executed will. Whether you have many assets or a few, are married or unmarried, have minor children or no children, you should have a will.

## Why do I need a will?

- With a will, you decide how your estate will be distributed and you may dispose of your property as you choose. Without a will, your estate is distributed to your heirs, who are determined in accordance with state law.
- With a will, you can direct that all of your estate be distributed to your surviving spouse. Without a will, your estate will be shared by your surviving spouse and children, including minor children.
- With a will, you can nominate the person whom you want to be guardian of your minor children. Without a will, the choice of guardian will be determined by a court.
- With a will, property can be distributed to trustees of your choice to manage the property on behalf of incapacitated adults, minor children, children with special needs or beneficiaries who might need protection from creditors and their own unwise decisions. Without a will, property might be distributed to these beneficiaries outright or to a conservator chosen by a court, and minor children will receive their property upon reaching age 18.
- With a will, you can direct that your property be available to your surviving spouse during his or her lifetime and pass to your children—perhaps children from a previous marriage—upon the surviving spouse’s death. Without a will, the property that is distributed to your surviving spouse will be distributed upon his or her death as your surviving spouse decides.
- With a will, you choose the person, bank or trust company to serve as executor of your estate. The executor will manage and distribute your estate in accordance with the law and the terms of your will. Without a will, a court chooses an administrator of your estate at the request of your heirs, who may or may not agree on the choice.
- With a will, your executor can be given full powers to sell your property and manage it without requesting permission of a court. Without a will, your heirs must

petition a court for the administrator to be granted these powers.

- With a will, you can provide that your executor serve without posting a surety bond and filing an inventory or periodic reports to a court. Without a will, your heirs must petition a court to relieve the administrator of these duties.
- With a will, you can provide for gifts to charity out of your estate. Without a will, all of your property will be distributed to your heirs.
- With a will, you can structure an estate plan to reduce federal estate taxes. Without a will, your estate may owe more in taxes than it would with a properly structured estate plan.

## What are the requirements for a valid will?

The laws of each state establish the requirements for a valid will. These are the requirements for a valid will in Georgia:

- you must be at least 14 years of age
- you must have a decided and rational desire as to the disposition of your property
- you must execute your will freely and voluntarily
- your will must be in writing and signed by you
- your will must be attested and signed in your presence by at least two competent witnesses

## How long does my will remain valid?

The mere passage of time has no effect on the validity of a will. Of course, laws and circumstances may change, which may render a will ineffective or create unintended results. You should review your will at least once every two or three years, and you should always review your will if you have a major life change, such as a marriage, divorce, birth or adoption of a child, or a substantial increase or decrease in wealth.

## What effect does my subsequent marriage, divorce or birth or adoption of a child have on my will?

If you get married, get divorced or have or adopt a child after the execution of your will, certain provisions of your will may be modified—or even revoked—by law. You

should always review your will in the event of marriage, divorce, or the birth or adoption of a child.

## Can my will be changed or revoked?

Your will does not take effect until you die and the probate court admits your will to probate. As long as you remain competent to execute a will, you may change your will at any time before your death. A will is changed either by executing a written document called a codicil, which makes changes to an existing will, or by executing a new will. (A codicil must be executed according to the same rules that apply to wills.) You do not need to give any notice to your beneficiaries if you change your will, and your beneficiaries do not need to approve any change to your will. You may revoke your will at any time before your death. The best way to revoke a will is to execute a new will.

## Who should write my will?

Writing a will involves making decisions requiring professional judgment that can be obtained only by years of study, training and experience. In addition, the laws governing wills and probate are always changing. You should not write your own will or use a form or computer software purchased from an office supply store or online retailer. A do-it-yourself will may leave your estate and your beneficiaries in worse shape than if you died without a will. A practicing attorney with experience in drafting wills can provide the best advice to you about the distribution of your estate and draft a will that is best for your individual situation and intentions.

## How much does a will cost?

Attorneys usually charge an hourly rate for their time or a flat fee for a particular service. In either case, your attorney should be able to give you an estimate of the fees for the drafting and execution of your will. Typically the process includes at least one initial meeting with the client, legal research, preparing recommendations as to the content of the will, drafting the will, making revisions based on the client’s review and supervising the execution of the will. The cost usually depends on the amount of time needed to complete the process, and the amount of time needed to complete the process usually depends on the complexity of the client’s will.

## Is my will from another state valid in Georgia?

A will that was executed in another state that meets the requirements of a valid will in Georgia is usually valid in