
Wills and Probate

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What is a will?

A will is a legal document that directs how your property will be distributed upon your death. It designates a person, called a Personal Representative (formerly called an executor), to handle the administration of your estate. A will can also appoint a guardian for minor children.

Does a will avoid probate?

No. Whether or not your property must go through probate depends on how the property is titled at the time of your death. Property that is titled solely in your name, with no beneficiary designation, must go through probate in order transfer legal title to the person designated in your will or, if you have no will, to your heirs.

What type of property does not go through probate?

Property that is held in joint tenancy or is subject to a beneficiary designation (such as a life insurance policy or a retirement account) does not go through probate. Property that is held in a trust does not go through probate.

What happens to my property if I die without a will?

If a person dies without a will, leaving property that must go through probate, Michigan law provides for the distribution of the property to the person's heirs. There are detailed provisions in the law that define who is an heir and what share the heir will take. Adopted children are treated the same as the biological children of their adoptive parents. Stepchildren are not heirs of their step-parents.

Does my spouse have a right to a certain amount of my property when I die?

If a married person dies without a will the spouse is entitled to a share (as defined by law) of the probate estate. If a married person dies leaving a will, the spouse can elect to take his/her share as specified in the will, or can elect to take a specific share (as defined by law) of the deceased spouse's estate. A spouse is also entitled to a homestead allowance, a family allowance, and an exempt property allowance payable from the deceased spouse's probate estate. If the probate estate is insufficient to pay the allowances, and the deceased had a revocable trust, the allowances will be paid from the trust.

Do my children have a right to a certain amount of my property when I die?

You can exclude your children from your will. However, if you die without a will your children may inherit a certain portion of your estate (if you leave a surviving spouse and your estate is over a certain amount) and your children will inherit all of your estate if you do not leave a surviving spouse.

Where should I keep my will?

You can deposit your will for safekeeping at the Probate Court. There is a one-time fee of \$25. You can withdraw your will at any time. This is safer than keeping the will at home. If you keep it in a safe deposit box you should make sure your personal representative knows where the box is located.

What costs are involved in probating an estate?

The probate court charges a \$175 filing fee and an inventory fee which is based on the value of the probate estate. Except for small estates there is an \$80.25 fee for publishing a notice to creditors. If the personal representative retains an attorney, the attorney fees can be paid from the estate. Most attorneys charge an hourly rate for probating an estate, and not a percentage of the estate.

How long does it take to probate an estate?

Small estates (where the gross value of the estate assets minus funeral expenses is under \$22,000) can be probated through a summary proceeding. A person entitled to inherit from the deceased or the person who paid the funeral expenses can file a petition and obtain an order from the Probate Court to reimburse the person who paid the funeral expenses and assigning the balance of the estate to the heirs on the same day. For most other estates, the personal representative must publish a notice to creditors and give the creditors four months to file a claim. Once this period has elapsed and the creditors have been paid the property can be distributed. In most cases, if the deceased person's financial affairs were in good order and there are no disputes among the beneficiaries, the probate process can be completed in six months to a year.

Is there a special procedure if the only asset in the estate is a car?

If the total value of all motor vehicles owned by the deceased is less than \$60,000 and there is no other property that requires probate the surviving spouse, or the closest next of kin if there is no surviving spouse, can take a certified copy of the death certificate and, if available, the certificate of title to a Secretary of State office and fill out an affidavit form. The Secretary of State will then issue a new certificate of title to the surviving spouse or to the closest next of kin.

If a minor child inherits money, is the money paid to the parent?

If the amount is over \$5,000 the probate court will appoint a conservator for the child. The conservator will be required to place the money in a restricted account and will not be able to withdraw money without a court order. The child will be entitled to receive the money when he/she reaches age 18. If the amount is under \$5,000 it can be paid to the child's legal custodian or guardian, the minor (if married), or deposited in a bank account in the minor's name. If a person wants to leave money in a will to a minor child, he/she can include provisions in the will to create a trust for the child. The trust can

include specific provisions about how the money is to be spent and when it can be paid to the child. It could provide, for example, that a partial distribution to the child will be made when the child reaches age 21 or 25, and the remainder will be paid at age 30, with the trustee having discretion to make payments from the trust for the child's education, health, and welfare prior to age 30.

