

Do You Need a Will?

A Last Will and Testament is an essential estate planning tool for most people with accounts or property in their name. It can ensure that your assets will be distributed after your death according to your wishes and can greatly simplify the estate administration process.



5600 Harrison Avenue
Cincinnati, Ohio 45248
513.251.4900
www.niehauslaw.com

What is a Will?

A Will is a legal document signed by the testator (i.e. the person making the Will), which directs the distribution of probate assets to heirs after the testator's death, and nominates an executor to be in charge of the estate administration process. A Will grants the executor the power to sell real estate and to serve without bond. A Will is also the document through which a parent of minor children nominates a guardian for those children.

What happens if you do not have a Will?

When someone dies without a Will, Ohio law dictates who will inherit based on his or her next of kin. Without a Will, family members will need to agree on who will serve as the administrator of the estate (or a hearing will be necessary to decide). An additional proceeding called a land sale case will be necessary if all next-of-kin do not consent to the sale of real estate (or if a next of kin is a minor), and the estate may incur expenses for bond premiums.

Does a Will override beneficiary designations?

No. Beneficiary designations and joint ownership determine how a financial institution will distribute an asset after the owner's death. If an asset is in the owner's name alone with no beneficiary designation, then it is considered a "probate asset" and is distributed according to the Will. See our article titled Probate & Non-Probate Assets.

Can you prepare your own Will?

While self-prepared or ready-made Wills are widely available and can be valid, there can also be many problems with these documents, such as improper execution and witnessing, insufficient contingencies, or a lack of executor powers and other helpful provisions. Self-prepared Wills can increase administration costs, and may also be deemed invalid if they are not created in accordance with the laws of Ohio.

Meeting with an attorney to draft your Will provides an opportunity to discuss your overall estate plan, and whether particular assets should be handled through beneficiary designation, a trust, or through probate. An attorney can also explain how income taxes and/or estate taxes will affect your beneficiaries, so that your assets pass in the most efficient way possible.

What if you can only find a photocopy of your Will?

Only the original Will can be readily admitted to probate court after your death. A photocopy can sometimes be admitted, but only with a hearing and testimony from the individuals who witnessed the Will signing. This results in additional attorney fees and costs, and can be problematic if a witness cannot be found or is deceased.

If you executed a Will but cannot find the original, it is best to have a new Will prepared so that your wishes are followed at your death.

Can you make a simple change to your Will by writing on the document and initialing the change?

No. The State of Ohio does not allow partial revocation of a Will. Any handwritten changes will be invalidated by probate court, and the Will provisions will be admitted as originally signed. If you wish to make changes, you should have a new Will prepared.