

# Wills in Colorado

A will is a document often created in an estate plan. It can be titled as “Last Will and Testament of John Doe” or “Will of John Doe.” A will is made and signed by a testator (male) or testatrix (female) and provides instruction for what the testator wants to happen after his or her death.

## Who can make a will?

A testator must be 18 years or older and of sound mind. A testator must generally know:

- what his assets are,
- who his family members are,
- how his will affects who will inherit from him, and
- his will must represent his wishes.

In addition, a testator must sign a will voluntarily and not be under any constraint or undue influence by another person.

## What does a will do?

A will can accomplish multiple purposes:

- The most common purpose of a will is to designate who will inherit the testator’s assets after death. A person who is designated to receive an inheritance (“devise”) from a testator in a will is called a devisee.
- A testator can also nominate someone in his will to serve as his personal representative. A personal representative in Colorado is known as an executor in other states. A personal representative is the individual or entity who administers the estate of the person who died (“decedent”) after his death, pays debts of the decedent, and completes the decedent’s wishes for distribution of his assets to his devisees or heirs.
- A will can nominate someone to be a guardian for the testator’s minor or disabled child.
- Drafting a will includes consideration of applicable taxes after your death. You should consult with an attorney or tax professional if you have questions about taxes.

## How is a will created?

A will must be in writing and signed by the testator. If the testator is physically unable to sign his will, another person can sign the will on behalf of the testator, with the testator’s permission. Colorado law requires that if another person is signing for the testator, the person can only do so if the testator gives that person permission and the person signs the document in the physical and conscious presence of the testator.

An attorney often creates a typed will for a client, with two witnesses and/or a notary public to witness the testa-

tor’s signature. Colorado does recognize holographic wills, which are wills written and signed in the testator’s own handwriting. Holographic wills are not required to have the signature of witnesses or a notary public. However, you should be careful about creating your own will. Wills that are created without the advice of an attorney are frequently found to be confusing or insufficient, which may cause delay, expense or litigation. As explained below, not all assets can be controlled by a will. [It is important to understand how your assets are titled and what your estate planning options are before you create a will on your own.](#)

## Does a will dispose of all of my assets?

Some assets are not governed or distributed by the terms of a will. These assets are often called nonprobate assets. An asset that has a beneficiary designation, payable-on-death (POD) designation, or transfer-on-death (TOD) designation is a contract with that financial institution and is not controlled by the terms of your will. In addition, if you own an asset with another person as a joint tenant or joint owner, that asset will pass to the other joint owner(s) after your death and is not controlled by your will.

If your assets do not have these designations, are owned as tenants-in-common, or are owned by you alone, they generally are considered probate assets and would be distributed under the terms of a will. To better understand which of your assets would be governed by the terms of your will, seek the advice of an attorney, reference the Colorado Senior Law Handbook, or reference the following brochures: Joint Tenancy, Probate in Colorado, and Estate Planning.

## What is a personal property memorandum?

A personal property memorandum is a document that can direct who you want to inherit specific personal property items, such as household goods and jewelry. You cannot give away money through a personal property memorandum. If you create a personal property memorandum yourself, you should sign and date the document and make sure it can be found with your will. You can change your memorandum at any time, and it is easier for your heirs to understand your wishes if you create a whole new document instead of marking on the original version.

## Do I have to include all my family in my will?

You may give your assets to whomever you wish. However, Colorado law provides protections for surviving spouses who are left out of a will, and children who were born after the will was executed when no provisions were made for

them. If you have questions about your estate planning options, you should consider speaking with an attorney.

### **What if I don't have a will?**

A person who does not have a will is termed to have died intestate. Colorado has laws that designate how a decedent's probate assets would pass upon his death if he dies intestate. Colorado's intestacy laws assume that a decedent would want his probate assets to pass first to his spouse and children. If a decedent has a blended family, Colorado's intestacy laws contain very specific terms to provide amounts to the surviving spouse or the decedent's children from a current or prior partner. If a decedent does not have children or a surviving spouse, generally his probate assets would be inherited first by his parents, if living, and then siblings and other relatives. If you want your assets to be inherited differently than stated in Colorado's intestacy laws, your estate planning documents can designate different wishes.

### **Can I change my will?**

A will can be amended or revoked by a testator. An amendment to a will is called a codicil. In order to revoke your will

or create a codicil, a testator must meet the same requirements as if he were creating a will. Specifically, a codicil must be in writing and signed by the testator. In order to revoke his will or create a codicil, a testator must understand the significance of his action and must not be unduly influenced or forced to do so by another person.

If you wish to make changes to your current will, do not write directly on your will. Writing in new clauses or scratching out parts of your will creates confusion about what you intended and may result in increased court involvement or fighting between your family members. It is clearer for your devisees and the court if you sign a codicil or an entirely new will in order to change your wishes.

### **When should I update my will?**

Review your will and other estate planning documents every few years in case changes in your life, in the lives of your devisees or nominated personal representatives, or in the law necessitate changes to your current documents.

Colorado does recognize wills signed in other states. However if you recently moved to Colorado, you should consider speaking with a Colorado attorney to make sure the language of your will is supported by the laws of Colorado.

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