

# Making a Will in New Hampshire

*A will is simply a written plan for transferring one's property at death which is signed with special formalities. If you have no plan for the transfer of your property when you die, the State of New Hampshire has one for you. The State provides a general plan rather than one that considers your needs. However, if you understand the provisions of the New Hampshire law of descent and distribution, only rarely will a "State prepared" plan meet your specific needs. By making a will, you control the transfer of your assets.*

## **Does the State, in effect, make a will for me if I don't?**

Yes, if you fail to make a will, your property will be administered and distributed according to New Hampshire's statutes of descent and distribution. A Judge of Probate will appoint as an administrator a person nominated by those having the greatest interest in your estate; i.e., your surviving spouse, your children, or nearest relatives. If they fail to come forward within a specified time, a creditor may petition for an administrator. Upon appointment, an administrator will gather your assets, pay the claims against your estate and the expense of administration, and distribute the balance.

## **Are there any significant disadvantages of dying without a will (dying intestate)?**

Yes, the method of property distribution is rigid and can't accommodate varying situations. Often, property distribution is not what the person who died (decedent) would have wanted.

## **What are the advantages of a will?**

With a will, you can provide for the orderly and equitable distribution of your probate property after death. Making a will has the following advantages:

- **Control of your property's distribution.** Besides allowing you to make specific bequests to those you choose, a will lets you decide how and when these bequests will be received. You can provide for the distribution of property and other needs if you and your spouse die in a common accident. A will remains completely under your control and can be changed while you are competent at any time before your death.

- **Nomination of the personal representative.** With a will, you can nominate a personal representative (executor/executrix) to carry out your wishes and settle your estate.

- **Appointment of guardian(s).**

You can designate a guardian or guardians to look after the interests of any minor children or heirs with special needs. Although the probate court generally makes the final guardianship decision, much consideration is given to the nominations made in a will. In the absence of a will, the court acts alone to appoint a guardian.

- **Establishing a trust for children who may not be ready to handle money at age 18 or for incapacitated heirs.**

- **Reduction of costs.**

With a will, you can take advantage of ways to reduce administrative expenses. There also may be tax advantages by having a will, contact your tax consultant.

He/she must first know your legal residence (domicile). In most cases this is the place of actual residence of the person intending to make the will. The lawyer must know where the probate of the will shall occur. Choose a personal representative, an executor or executrix, to carry out the provisions of your will. Base your choice on the person's business management ability rather than friendship or sentimental reasons. You may choose a spouse, partner, relative, friend, lawyer or a financial institution. Discuss your needs in settling your estate with the person of your choice and get that person's consent to assume the responsibility. You should choose an alternate representative in case your first choice is unable to serve.

You should choose a guardian for your children if they are under 18 years of age and choose an alternate in case your first choice can't serve. Decide whether you want the guardian to manage the financial assets as well.

The lawyer must also have a full and complete understanding of your present and future assets. You should be able to describe these accurately and state where they are located. You may want to discuss pre-death transfer of assets through the use of gifts or trusts.

***Among the most important assets which you should be able to describe are the following:***

- **Choose your lawyer with care.**

If you don't have a lawyer, ask people you know for recommendations. You could also call the Lawyer Referral Service of the New Hampshire Bar Association (229-0002) to learn about their service.

- a.** All property owned either as an individual or jointly with rights of the survivor to take all. While real estate held passes directly to the survivor, there may be tax implications.
- b.** Any and all stocks, bonds, bank accounts, together with current values or amounts.
- c.** Certain major assets such as life insurance, real estate, and business interests.
- d.** Possible sources of inheritance from other members of your family and friends.

## **Before I see a lawyer, what information should I get together?**

A lawyer, in order to properly draft a will, must have a complete understanding of your financial and family situation. Therefore, it is most helpful if you assemble certain basic information before you first confer with a lawyer. Request a copy of Your Valuable Papers from a UNH Cooperative Extension county office. This publication will help you organize your papers and financial records.

- e.** Any trust to which you are a beneficiary or to which you transferred funds, and who the residual beneficiary is.
- f.** Employee benefit plans through your employer as established for you.

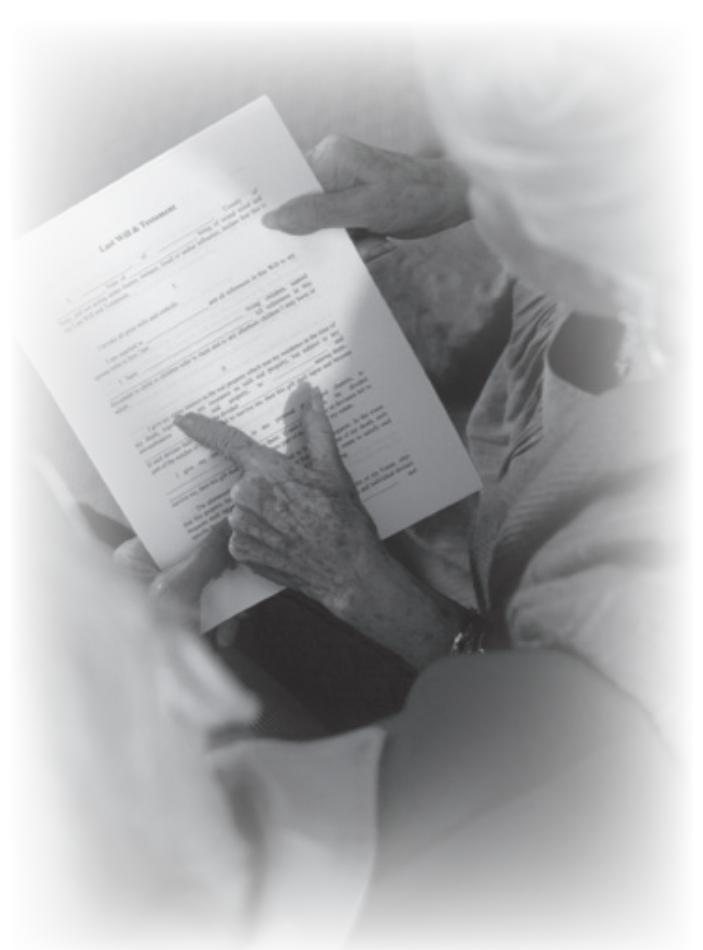
***The attorney may also want an opportunity to review certain important documents. Among these documents are:***

- a.** Existing wills made by you, your spouse, or your partner.
- b.** Existing wills of others under which you may inherit (take).
- c.** Existing trust agreements of others under which you may inherit (take).
- d.** Existing trust agreements you created and/or funded.
- e.** Agreements, stipulations, or orders regarding separations or divorce (prenuptials).
- f.** Tax returns.
- g.** Copies of annuities and pension plans and salary continuation agreements.
- h.** Copies of deeds and mortgages.

The attorney must have a full awareness of your personal debts and the debts for which your estate may become liable upon death. As well, the attorney must have complete information about the members of your family and their relationships even if you do not intend to leave them anything. Named on this list would be your biological and adopted children, as well as their children if they are deceased. If you have no children you must list your parents, brothers, and sisters. Include any friends you wish to benefit by listing their legal name. Providing addresses for everyone listed will be helpful for locating them when the will is probated.

Finally, and most importantly, the attorney needs to know what you wish done with your estate. Your objectives are the lawyer's foremost consideration. Usually people who decide to make a will go into the attorney's office with only vague notions of what they wish to do with their estate. In most cases, the lawyer, because of his/her understanding of your family situation and his/her experience in this area, will be able to assist you in determining exactly what you want done with your real and personal property and the best way for you to do it. If you choose to make a gift to organizations, make a separate list with the names and addresses of the organizations and the types, amounts and purposes of the gifts.

Plan to avoid excessive detail in your will, such as making funeral arrangements and transferring household goods which include personal belongings of sentimental value. Doing so increases the length and cost of making your will and may create costly changes and inconveniences later.



## What should I do while meeting with the lawyer?

Come prepared for your appointment. Sometimes people seem to expect lawyers to know automatically their wishes and they fail to provide important information. You can lessen a lawyer's fee by being prepared for your appointment. Upon understanding your wishes, the lawyer can offer suggestions for meeting your purposes and may recommend additional help from an accountant, trust officer or other professional.

Explain your needs and ask for suggestions about how to meet them. When your lawyer is fully informed about your wishes, ask the approximate cost of writing your will.

## Where should a will be kept?

A will should be prepared with an original and a copy. The original is the only one executed and should be kept safe from fire, theft or other loss.

## When should I review my will?

Review your will every few years or if any of the following events occur:

- a.** Your assets change significantly.
- b.** You divorce, or there is another change in the family, such as births, adoptions or deaths.
- c.** Tax laws change.
- d.** You move to a state with community property laws.

## Other end of life planning considerations.

Often when preparing a will, discussion turns to end of life planning and planning for incapacity. Although living wills and Durable Power of Attorney for health care are available through many doctors, this is a good time to complete these documents if you have not already done so. You may also wish to discuss Durable Power of Attorney for financial needs.

## Where do I get more information?

Call the New Hampshire Bar Association at 224-6942 or download a copy of Wills, Trusts and Advance Directives (2004) prepared by the Public Information Committee of the New Hampshire Bar Association (<http://www.nhbar.org/pdfs/wills&trusts04.pdf>) – outlines considerations and tools important to estate planning.

Retrieve a copy of Advance Care Planning Guide from the Foundation for Healthy Communities ([www.healthynh.org](http://www.healthynh.org)) - a consumer guide to advance health care directives and sample forms with instructions.

\*Information is based on the NH Law applicable at the time the publication was published. This information is not intended as legal advice.

## Credits

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