

What exactly is a will?

A will is a written document which provides a written statement of wishes regarding how property is to be distributed upon a person's death. If a person dies without a will, Colorado law determines who a person's heirs will be and in what proportions they will be given property.



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THE BASICS OF WILLS

WHAT DOES A WILL DO?

- Controls how property is distributed according to a person's wishes;
- Allows a person to select the beneficiaries, the property to be gifted or distributed and when and under what conditions the beneficiaries receive the property;
- Preserves an estate for intended beneficiaries;
- Nominates a guardian and conservator for minor children or adult disabled children and can establish a trust and appoint a trustee so children (and even pets) will be provided for;
- May prevent disputes;
- Provides peace of mind that property will be distributed according to a person's direction;
- Empowers a person to decide who their personal representative (a/k/a executor) will be (i.e., person who will be in charge of administering your estate);
- Does not have to be complex or expensive.

THINGS TO KEEP IN MIND WHEN HAVING YOUR WILL PREPARED

- The cost will depend upon complexity of the estate plan;
- The amount of time necessary to complete the estate plan varies depending on the situation;
- Be prepared before meeting with an attorney (e.g., have list of assets, consider who your beneficiaries will be, consider who you will nominate as your personal representative, as trustee of any trusts, as conservator and/or guardian of your minor children, etc.);
- Be sure to update your will when life events change (e.g., birth/adoption of a child, divorce, separation, changes in finances, etc.)

WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

If you die without a will in Colorado, your assets go to your closest relatives under state “intestate succession” laws. Only assets that would have passed through your will are affected by intestate succession laws. Usually, that includes only assets that you own alone, in your own name. Some assets **don’t** pass by will, and aren’t affected by intestate succession laws. For example:

| | |
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| • property you’ve transferred to a living trust | • life insurance proceeds |
| • funds in an IRA, 401(k), or other retirement account | • securities held in a transfer-on-death account |
| • real estate held by transfer-on-death or beneficiary deed | • property you own with someone else in joint tenancy |

These assets pass to the surviving co-owner or to the beneficiary you named, whether or not you have a will. Under intestate succession, who gets what depends on whether or not you have living children, parents, or other close relatives when you die.

| If you die with: | Here is what will happen: |
|--|---|
| children but no spouse | children inherit everything |
| spouse but no descendants | spouse inherits everything |
| spouse and descendants from you and that spouse, and the spouse has no other descendants | spouse inherits everything |
| spouse and adult descendants from you and someone other than that spouse | spouse inherits the first \$150,000 of your intestate property, plus 1/2 of the balance your descendants inherit everything else |
| spouse and adult descendants from you and someone other than that spouse | spouse inherits the first \$100,000 of your intestate property, plus 1/2 of the balance descendants inherit everything else |
| spouse and at least one minor descendant from you and someone other than that spouse | spouse inherits 1/2 of your intestate property descendants inherit everything else |
| spouse and parents | spouse inherits the first \$200,000 of your intestate property, plus 3/4 of the balance parents inherit remaining intestate property |
| parents but no spouse or descendants | parents inherit everything |
| siblings but no spouse, descendants, or parents | siblings inherit everything |

Children’s Shares in Colorado

If you die without a will in Colorado, your children receive an “intestate share” of your property. The size of each child’s share depends on how many children you have and whether or not you are married. (See the table above.) For children to inherit from you under the laws of intestacy, the state of Colorado must consider them your legal children. Keep in mind:

- **Adopted children.** Children you legally adopted will receive an intestate share, just as your biological children do.
- **Foster children/stepchildren.** Foster children/stepchildren you never legally adopted don’t automatically receive a share.
- **Children placed for adoption.** Children you placed for adoption and who were legally adopted by another family do not receive a share. But if your biological children were adopted by your spouse, that won’t affect their intestate inheritance.
- **Posthumous children.** Children conceived by you but not born before your death will receive a share. A posthumously gestated child created by stored **genetic material** is also entitled to inheritance rights.
- **Children born outside of marriage.** A share of a father’s estate may pass to a child born outside of marriage if the court establishes paternity.
- **Children born during your marriage.** Any child born to during your marriage is assumed to be a child of your marriage and will receive a share of your estate.
- **Grandchildren.** Your grandchildren will receive a share only if their parent (your child) has died before you do.

Will the State Get Your Property?

If you die without a will and have no family, your property will “escheat” to the state’s coffers. This very rarely happens because laws are designed to get your property to anyone who was even remotely related to you. For example, your property won’t go to the state if you leave a spouse, children, grandchildren, parents, grandparents, siblings, nieces, nephews, or cousins.

Other Colorado Intestate Succession Rules

Here are a few other things to know about Colorado intestacy laws.

- **Survivorship period.** To inherit under Colorado’s intestate succession statutes, a person must outlive you by 120 hours.
- **Half-relatives.** “Half” relatives inherit as if they were “whole.” That is, your sister with whom you share a father, but not a mother, has the same right to your property as she would if you had both parents in common.
- **Posthumous relatives.** Relatives conceived before (but born after) you die, inherit as if they had been born while you were alive, as long as they survive at least 120 hours after birth.
- **Immigration status.** Relatives entitled to an intestate share of your property inherit whether or not they are US citizens.

