

**WHAT WILL HAPPEN IF I LEAVE
MY SPOUSE AND CHILDREN
OUT OF MY WILL?**

A surviving spouse has a right to claim at least one-third (if there are no surviving children) of your property. If the will gives the surviving spouse less than her share, she can claim her share anyway.

Property that is owned jointly with the "right of survivorship" is automatically owned by the surviving joint owner, regardless of the will. Typically, this includes some joint bank accounts and jointly owned real estate.

**IS YOUR LIFE INSURANCE PART OF
THE ESTATE?**

Proceeds from a life insurance policy will not part of the Will. The person who receives the proceeds of your policy will not be required to be use the money to pay for funeral expenses unless your Estate is named as the beneficiary of the policy.

**CAN YOU CHANGE OR REVOKE
YOUR WILL?**

You can change or revoke your Will because it is not effective until your death. If you want to make changes to your will, you should contact a lawyer.

Adapted from materials created by Martin Wegbreit.

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WHAT IS A WILL?

This pamphlet contains general information about your rights. Consult a lawyer if you have specific questions.

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CVLAS is a non-profit organization providing free legal advice, and representation to low income or elderly people in Central Virginia. Contact us Monday - Thursday 9-12 to see if you qualify for services.

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A Will is a written document that gives instructions on how you want your property distributed when you die.

WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

The Court divides your property if you die without a Will. Virginia law divides the property as follows:

If you are married the spouse normally gets all of your property. If you have children with someone other than your spouse, your spouse will have to share your property with those children.

EXAMPLE 1: John dies without a Will. His wife, Sue, and their two children, Steve and Jill, survive him. Sue inherits everything.

EXAMPLE 2: Jay dies without a Will. His second wife, Audrey, and Darlene (Jay's daughter by his first wife) and Jane (Jay and Audrey's daughter) survive him. Audrey inherits one-third of Jay's property and Darlene and Jane receive one-half of the remaining two-thirds.

If your spouse does not outlive you, all of your property will go to your children or their descendants (such as your grandchildren).

If you have no surviving spouse, children, or descendants of children, your estate will go to your mother and/or father if they outlive you.

More distant relatives may receive your property if none of your immediate family survives you.

Remember that this law can be changed in the future.

DO YOU NEED A WILL?

You need to have a will to make sure your property will go to the people you want.

Other Reasons for Having a Will:

- You may leave property to a friend or charity that would otherwise receive nothing under Virginia law. (for instance a boyfriend or girlfriend will not receive any of your property).
- You may leave specific property to a certain person (my collection of baseball cards to Aunt Susie).
- To make sure your property will be divided quickly and easily. A will could also prevent your family from fighting with each other.
- If a child under 18-years old inherits property from someone who did not have a Will, a court will have to appoint a guardian to manage the property. This is an expensive and very inconvenient process. A properly drafted Will avoids this.
- You can name the person you want to handle the distribution of your property (your executor) in your Will; otherwise a court will determine who handles your estate.

DO YOU NEED A LAWYER TO WRITE YOUR WILL?

Yes. A lawyer would know how to write it so that it will be clear what you want done with your property.

CAN YOU HANDWRITE A WILL?

Handwritten will are legal. It may not be a good idea though. There are several legal requirements that must be followed. The Will must be entirely in your handwriting. Two witnesses who receive nothing under the Will must be willing to swear that it's your handwriting.

WHAT SHOULD YOU DO BEFORE MEETING WITH A LAWYER?

Decide who should receive your property at your death (your "beneficiaries"). Do you want to leave all your property to one person, or do you want it divided?

Do you want to leave certain items of property to specified people (my baseball cards to Aunt Susie)? If so, make a list.

You should also decide who should be your executor. The executor's duties will include collecting your property, paying any debts, and distributing your property according to your will. The person you may name should be someone you trust.

It is a good idea to name an alternate executor in case your executor is unable to serve.