

# Planning Your Estate

## Part 2: Where There's a Will, There's a Way



Most people take care of their property while living, but many of these same people make no plans for its management after their deaths. Despite concern for families, friends, and property during their lifetimes, they fail to provide guidance when it is most needed—when they are no longer present to make decisions. As a result, the state of Mississippi decides how their belongings will be distributed.

Do you know to whom and how your property will be distributed by the state of Mississippi if you die without making a will? Do you need a will?

This publication will answer these two important questions and outlines things to consider when making a will.

The first step in determining whether you need a will is to become aware of what happens if you neglect to make one.

### Mississippi Law of Intestate Succession

Since something must be done with your property after your death, the Mississippi Legislature provides a method for dividing it among heirs if you fail to make other arrangements. The property of a Mississippi resident who dies intestate (without a valid will) is distributed by the formulas below. “Children” refers to legitimate children both biological and adopted, as well as illegitimate children.

**What is a will?**—A will is a written document that describes how its maker wants his or her property distributed after his or her death. A will is the blueprint that guides the court in distributing an estate. By making a will, you can decide who will receive your property, how much each person will receive, when they will receive it, and to some degree, what they can do with it.

A person who makes a will is called a **testator**. A person who dies is called a **decedent**. When a person dies leaving a will, he is said to have died **testate**. A person who dies without leaving a will dies **intestate**.

A will has no effect during the testator’s lifetime and becomes effective only upon his or her death. Only after the testator’s death can the plans and wishes detailed in the will be carried out.

**Who may make a will?**—According to the laws of Mississippi, any person 18 or older who is of sound mind may make a will.

**Can a will be changed?**—A will can be changed or revoked during the testator’s lifetime, as long as he or she remains competent. To change or amend it, a codicil (supplement) is added. An existing will should not have words or statements marked out or added. If major changes are desired in a will, it is better to revoke it and make a new one.

Survivors	Division of Property
Spouse, no children or grandchildren	All to spouse
Spouse and children	Equally divided among spouse and children
Children, no spouse	Equally divided among children, with descendants of deceased children taking the parent’s share
Parents, brothers, and sisters, no children or spouse	Equally divided among mother, father, brothers, and sisters with descendants of the deceased brothers and sisters sharing in their parents’ shares
No kindred	Reverts to the state of Mississippi

A will should be reviewed periodically, especially when there are changes in family or financial situations. Such circumstances include, but are not limited to, the following:

- Marriage, remarriage, or divorce since the will was written
- Birth of a child
- Death of an heir or next of kin
- Desire to change the status of your beneficiaries
- Wish to change provisions for executor
- Move to another state
- Additional property acquired
- Passage of new state laws or federal estate tax laws
- Increase in the value of personal property

**Can a person make his or her own will?**—Yes, a person can make his or her own will, but it must be wholly in the testator’s own handwriting. This type of will is called a holographic will. Each page should be dated and signed. A holographic will should NOT be signed by witnesses. Such a will is valid if the signature and the instructions are in the handwriting of the testator. But self-made wills frequently increase costs and trouble for heirs. A self-made will, just as any other, can be denied validity because of errors. Words used may not be interpreted by a court the way the testator meant them.

In most cases, a lawyer can advise and assist a person in drafting a will that best suits his or her needs. A lawyer can also help avoid the legal pitfalls that can result from a “do-it-yourself” will. No one should rely on the advice of untrained relatives or friends. Publications, books, and websites, including this publication, that give general instruction on wills should not be used as a substitute for legal advice based on individual circumstances and situations.

**What property cannot be disposed of by a will?**—Property owned by two or more persons in “joint tenancy with right of survivorship” is owned, after the death of one, solely by the survivor(s). Proceeds of insurance policies, pension funds, US Savings Bonds, P.O.D. (payable on death) deposits, or other assets where a beneficiary is named cannot be disposed of by a will unless the estate is named as a beneficiary.

**Are there restrictions on disposing of property by will?**—The privilege of passing property to anyone after death is a privilege granted by law. Wills must be made within the limits set by Mississippi law.

One important restriction keeps a testator from depriving his or her surviving spouse of a share of the property. According to Mississippi law, if the will of a husband or wife does not provide for the other, the survivor has the right to share in the deceased’s estate.

**Should a wife have a will?**—It is just as important for a wife to have a will as it is for a husband. On average, a wife outlives her husband by eight years.

At her death, the estate includes her own property and usually all or part of her husband’s estate.

**Must a parent leave the children anything?**—No. Children have no vested interest in their parents’ property. If you have children, any or all may be disinherited. It is not necessary to leave a small sum (such as a dollar) to a child to show that he or she was not forgotten. Attorneys usually name the children to show that the testator has not forgotten any of them. Otherwise, a child could contest a will, claiming his parent unintentionally omitted him or her.

If a testator fails to provide in the will for any of his children born or adopted after the execution of his will, the omitted child may claim, under certain conditions, a share in the estate. That share must equal what he or she would have received if the testator had died without leaving a will.

**Must a will be witnessed?**—A handwritten will should not be signed by witnesses. Other wills must be signed by two witnesses. These witnesses should not be related to you or benefit from your death. In all cases, the testator must sign the will. For more information, see Extension Publication 2220 *Declaring Your Wishes Through an Advance Health Care Directive*.

**What effect does divorce, annulment, or separation have on a will?**—Divorce or annulment does not revoke the disposition of property made by the will to the former spouse.

Separation does not end the status of husband and wife, and it is not considered a divorce. Any disposition made in a will to spouses who are separated is still effective.

**Is life insurance a substitute for a will?**—No. Life insurance is one kind of property that may be owned. If insurance is payable to an individual named as a beneficiary, a will has no effect on the proceeds. But if life insurance is payable to the estate, the will governs the distribution of the proceeds, which are subject to claim of creditors.

**What is an executor?**—An executor is the person named in a will to execute settlement of the estate. Any qualified person (competent, age of majority) or institution can be nominated executor. An individual need NOT live in Mississippi in order to qualify as executor, although it may be more convenient to use a resident. An executor can live in another state or even in another country.

**Is joint tenancy a substitute for a will?**—No. Since the order of death and the amount of time between joint tenants’ deaths will affect whose heirs receive the estate, joint tenancy is not a substitute for a will.

In some cases, and for certain types of property, such as money in bank accounts, joint ownership may be useful as a legal tool in addition to a will. It results in property going directly to the survivor upon the death of the other joint owner.

**What is the cost of having a will prepared?**—The laws affecting taxation and estate planning have grown very complex, and the services of an attorney fully competent in these fields are important.

Fees for legal assistance in making a will vary, depending on the size of the estate and the complexity of the will. Attorneys usually base their fees on the length of time spent with the testator and how long it takes to draft the will. Do not hesitate to ask an attorney for an estimate of his fee for preparing a will, preferably at the first meeting.

**Is a will for you?**—A will is a written document that describes how you want your property distributed after your death. By making a will, you can decide for yourself who will receive your property, how much each will receive, when they will own it, and to some degree, what they can do with it.

Drafting a will, as well as estate planning, involves decisions requiring professional skill and judgment, which can be obtained only through years of training, study, and experience. We recommend you use an attorney to draft a will suited to your own situation.

## Family Think Session

- Do you feel a will is necessary for your situation?  
Why or why not?
- Do other family members feel a will is necessary for the family situation?
- Who will receive your property if you die without a will?
- Consider the following:
  - A. For families without wills—
    1. *If you die without a will, what will happen to your property?*
    2. *If you have all property in joint tenancy with right of survivorship, what will happen to your property upon the death of all joint tenants?*
  - B. For families with wills—
    1. *Have you reviewed your will lately? When?*
    2. *Has there been a change in family or other circumstances that warrants a change in your will?*

## References

Information in this series is adapted from *Estate Planning for Every Montanan* by Marsha A. Goetting, Montana Cooperative Extension Service.

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Martin, Robert J. "Estate Planning An Investment in your Family's Future," Publication 1373, Cooperative Extension Service, Mississippi State University, 1990.

Milner, Dorothy Leggett. "An Introduction to Estate Planning." Research paper, Mississippi State University, 1978.

*Mississippi Code 1972 (Annotated)*, Vol. 20, Title 91, Sections 91-1-1 through 91-7-1.

*State of Mississippi Estate Tax Law*, Mississippi State Tax Commission, 1978.

## Quiz

Circle T or F for the following questions:

1. Any person 18 years or older who is of sound mind may make a will. T F
2. Parents must leave children part of their estate. T F
3. A will written in your own handwriting is called a holographic will. T F
4. A will cannot control the distribution of joint tenancy property. T F
5. A codicil must be executed in the same way as a will. T F
6. Legal separation revokes the disposition of property to the spouse. T F
7. Once a will is executed, it cannot be changed. T F
8. A person can draft his or her own will. T F

Answers

1. True
2. False
3. True
4. True
5. True
6. False
7. False
8. True

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Publication 1739 (POD-05-19)

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Produced by Agricultural Communications.

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Extension Service of Mississippi State University, cooperating with U.S. Department of Agriculture. Published in furtherance of Acts of Congress, May 8 and June 30, 1914. GARY B. JACKSON, Director