

**CONTACT THE  
LEGAL AID OFFICE  
NEAR YOU FOR HELP**

**CALL US AT  
1-866-534-5243**

**OR COMPLETE AN APPLICATION FOR ASSISTANCE  
ONLINE AT  
[WWW.LSNV.ORG](http://WWW.LSNV.ORG)**

**LSNV- ARLINGTON OFFICE**  
3401 COLUMBIA PIKE, SUITE 301  
Arlington, VA 22204

**LSNV- ALEXANDRIA OFFICE**  
121 N Washington Street, Suite 300A  
Alexandria, VA 22314

**LSNV- FAIRFAX OFFICE**  
4080 Chain Bridge Road  
Fairfax, VA 22030

**LSNV- PRINCE WILLIAM OFFICE**  
9240 Center Street  
Manassas, VA 22110

**LSNV- LOUDOUN OFFICE**  
8A South Street, SW  
Leesburg, VA 20175

**LSNV- Fredericksburg Office**  
500 Lafayette Boulevard, Suite 401  
Fredericksburg, VA 22401

**LSNV- MAIN OFFICE**  
4080 Chain Bridge Road  
Fairfax, VA 22030

(Providing FREE legal services to low-income,  
elderly and disabled residents of Northern  
Virginia since 1980)

**LEGAL SERVICES OF  
NORTHERN VIRGINIA,  
INC.**



**MAKING A LAST WILL  
AND TESTAMENT  
("WILL") IN VIRGINIA**

**(UPDATED 2014)**



## **1. What is a LAST WILL AND TESTAMENT (otherwise known as a "Will")?**

A will is a written statement signed by you setting forth how you would like your property to be distributed after you die.

## **2. Who can make a will?**

In Virginia, any person can make a will who is (1) at least 18 years of age and (2) mentally competent.

## **3. Do I need a will?**

Not everyone needs a will. However, if you own property, no matter how small of an amount or value, a will insures that your wishes are carried out about who receives your property after your death. A will also allows you to appoint an executor to manage your estate after you die and to nominate a guardian for minor or disabled children.

## **4. What property does a will control?**

A will controls only what is called the "probate estate." The probate estate consists of any property you own at the time of your death which remains after the payment of certain debts, allowances, and expenses, with some limitations. For example, the probate estate does not include property you own "jointly with rights of survivorship." This typically includes joint bank accounts and homes owned

by husband and wife. The joint owner who survives you automatically becomes the sole owner of this kind of property. The probate estate also does not include insurance policies that name a beneficiary. The beneficiary gets the insurance proceeds regardless of what your will says, unless you name your estate as the sole beneficiary on the policy. The probate estate is the only property subject to the probate process.

## **5. What will happen to my property if I die without a will?**

If you die without a will, Virginia has a law that directs how your property is to be distributed, without consideration of your wishes or intent. Under the law, your property goes to your closest relatives first. For example, if you are married at the time of your death, everything goes to your surviving spouse (unless you had children by a prior marriage in which case 2/3 goes to the children of the prior marriage and 1/3 goes to the surviving spouse). If there is no surviving spouse then everything goes to your children or grandchildren. There are several more steps that set out increasingly distant relatives as beneficiaries which include parents and siblings. If there are absolutely no relatives to be found then your property will go to the state.

## **6. Can I write my own will?**

In Virginia, you may write your own will if it is ENTIRELY in your own handwriting with your signature and the date at the end. If a will is in your own handwriting, it need not be witnessed. However, when the will is probated after your death, two witnesses must prove that the handwriting in the will is in fact your own handwriting. It is strongly recommended that you DO NOT use pre-printed will forms since these MAY NOT BE VALID if they are not properly executed. To avoid the possibility of having your will declared invalid, it is best to get the advice of an attorney.

## **7. Must my will be witnessed and/or notarized?**

If your will is not entirely in your own handwriting, it must be witnessed by two competent witnesses. Legally a will does not have to be notarized, but notarization is highly recommended because a notarized will, including a self-proving affidavit, is presumed valid in Virginia. That means that no additional proof is needed to probate the will after your death.

## **8. To whom may I leave my property?**

In general, you may leave your property, or any part of it, to any person or organization you desire. For example, you may choose to leave property to a relative, friend, or charitable organization. However, you

should be aware that, if you are married at the time of your death, your surviving spouse may be entitled to a portion of your estate regardless of the provisions of your will. If you chose not to name your spouse in your will, you should consult an attorney first.

## **9. Can I leave my property to certain persons simply by putting labels on my property or keeping a list of personal items that I want certain people to have?**

Using labels to name the persons to whom you want to give certain items will have no legal effect. However, Virginia law now allows an individual to have a separate written statement or list of tangible personal property naming who is to receive the property. The only requirements are that the will must refer to the list and you must sign the list.

## **10. What is an executor?**

An executor is a person named by you in your will to distribute your property and carry out your wishes after your death. If the person you name is a woman, she is called an "executrix." If you do not name an executor in your will, the court will appoint an "administrator" who does the same thing as an executor.

## **11. Who can be my executor?**

You may name anyone you wish to be your executor so long as they are over 18 years of age and mentally competent. You may also elect to have more than one executor or co-executors. However, the person you name should be someone you know and can trust to carry out your wishes. Virginia residency is not a requirement for an executor. If there is no one in Virginia, you can name an out-of-state resident. However, if there is no in-state co-executor you will not be able to waive bond (bond money to insure the estate). Also, at the time of probate, a Virginia resident must still be appointed to accept service of process for the estate. For these reasons, it still may be a good idea to name a resident as co-executor if possible.

## **12. Where should I keep my will?**

Your will should be kept in a safe place where it can be easily found and accessed after your death. It is a good idea to tell your executor where you keep your will. It is important that your executor be able to access your original will document after your death because the court requires the original document rather than a copy. If the original will cannot be obtained, it is very difficult to have the will validated by the court.

Many Virginia counties and cities allow you to file your will for safekeeping at the Clerk's office of the local Circuit Court for a small fee. Note that you are never required to file your will at a court. If you are interested in this option, contact the Circuit Court in the county or city where you live.

## **13. Can I change my will after I write it?**

You can change your will either by (1) revoking it and writing a new one or (2) writing an amendment to the will called a "codicil." Both methods require certain legal formalities, so it is not a good idea to attempt a change in your will without consulting an attorney. Also be aware that simply crossing out words in your will and writing in changes by hand is ***not*** a legally valid method to make changes to your will in most cases.

## **14. What is probate?**

Probate is the legal procedure in which your debts are paid and your remaining property is distributed to the beneficiaries named in your will. The process begins when your will is submitted to the Clerk of the Circuit Court, who declares it to be valid. It is then placed on public record, and the executor you appointed in your will is ordered to carry out your wishes. When your estate is finally settled, your executor files a final accounting or, in some cases, a simple

affidavit with the court. If the value of your estate is very small, you may not have to go through any formal probate proceeding since Virginia has a special procedure for the administration of small estates. You should consult your local Circuit Court Clerk, or an attorney, to determine this.

**15. What is a revocable living trust? Should I have such a trust in addition to a will?**

A revocable living trust is a legal way to transfer assets out of your own name while maintaining control over the assets. If an asset is not titled in your name, you do not legally own the asset, and therefore, you cannot dispose of it in your will. Assets that are not part of your will do not go through probate. Sometimes it can be advantageous for assets to avoid probate so people create trusts to protect their assets from the probate process. If you are interested in determining whether a trust is right for you, you should speak with a private attorney. Due to limited resources, Legal Services of Northern Virginia is not able to assist with trusts.



**\*\*\*IMPORTANT DISCLAIMER:**

EVERYONE'S SITUATION IS  
DIFFERENT AND MOST EVERY  
RULE HAS EXCEPTIONS. THE  
INFORMATION IN THIS  
BROCHURE IS INTENDED FOR  
INFORMATIONAL PURPOSES AND  
SHOULD NOT BE SUBSTITUTED  
FOR INDIVIDUAL LEGAL ADVICE  
SPECIFIC TO A PARTICULAR  
CIRCUMSTANCE. PLEASE  
CONTACT A LAWYER FOR  
INDIVIDUAL ADVICE. \*\*\*\*\*