

# Estate Planning

## How Making a Will Protects Your Land & Loved Ones



### Why Do You Need a Will?

Estate planning is an important part of maintaining land ownership and providing for your family. A **will** is a legal document that puts in writing what you want to happen to your property after your death. Anyone who owns anything or anyone who may inherit anything needs to write a will. If you do not have a will, the laws of North Carolina determine who receives your property at your death, and your wishes will not be considered. When writing a will, you will choose an **executor** who will be responsible for making sure your property is distributed according to your wishes. Writing a will is especially important for landowners because ownership of land may be split up among multiple relatives, creating what is called “heir property.”

#### Requirements for a Valid Will in N.C.

- Will maker must be at least 18 years old.
- Will maker must be of sound mind.
- Will must be signed in the presence of a notary and two witnesses.

#### Requirements for a Valid Witness

- At least 18 years old
- Witness is not a beneficiary under the will.

#### Requirements for an Executor

- At least 18 years old
- Of sound mind

### WRITING A WILL TO AVOID HEIR PROPERTY AND THE POTENTIAL FOR PARTITIONS

Historically, many families did not write wills, and their land is now owned as “heir property.” Partial ownership interests in the land were passed on to a large number of people who were classified as “heirs” in the eyes of the law, and when those heirs died themselves, their ownership interest was passed to *their heirs*. The result is that in a relatively short period of time, ownership of small pieces of property have become co-owned by dozens (and sometimes hundreds of people), with fractional interests continuing to become smaller. This form of joint ownership means that owners must work together to maintain the land, pay taxes, and make decisions regarding the property. Moreover, *any co-owner can go to court to seek the division or sale of the property without regard to how large an interest they own*. This means that an individual with a marginal ownership interest may be able to force a sale of the entire property through a legal process called **partition**. Writing a will helps to avoid the pitfalls of heir property.

## After Writing Your Will

You should keep your will with your other valuable papers in a safe place, protected from fire, theft, and floods, or in a safe-deposit box. Or, for no charge, you can file it with the Clerk of Superior Court. You can access it this way but others cannot unless you give the Clerk special permission. It is important that your heirs know where to find your will and other documents.

If you want to change your will, you can write a whole new will, or for a minor change, you can have a **codicil** (a typewritten addition to the will that states the changes) attached to your original will. The codicil must also be signed, witnessed by two witnesses, and notarized. You can change your will as often as you want, but you should not try to change your will by striking through part of it or writing on it — this may make it invalid.

After your death, your executor will file your will with the Clerk of Court in your county of residence. This process, called **probate**, is a court procedure by which a will is proved to be valid and the executor is given the authority to pay your debts and taxes from your assets and to transfer your land and other property to the persons named in your will. The Clerk of Superior Court oversees the probate process, and the executor must make an accounting for all assets and property distributed.

## What if My Will is Lost?

When a will is lost, there is a legal presumption that the will has been revoked. Although this presumption can be overcome by meeting certain legal requirements, your loved ones may not be able to do so and your assets could be treated as though there was no will. A will may not be found for a variety of reasons at death (for example, the person whose will it is tore it up or the will was destroyed by flood or the will was not stored in a safe place and simply is hard or impossible to find). Because of this uncertainty and risk that your

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### DURABLE POWER OF ATTORNEY

Allows you to choose someone to act in your place regarding legal and financial matters if you are unable to.

### HEALTH CARE POWER OF ATTORNEY

Allows you to choose someone to make health care decisions for you if you are unable to.

### LIVING WILL

Allows you to make decisions ahead of time about what kind of medical care and treatment that you want to receive in an end-of-life situation.

wishes will not be able to be followed if your loved ones



cannot find your will, if you cannot locate your will, creating a new will with the assistance of an attorney and letting the lawyer know that you have been unable to find the lost will is a safer option than leaving the result to chance.

## Do I Need an Attorney?

It is highly recommended to have a lawyer write your will and other estate planning documents. Handwritten wills may be valid under certain circumstances but can lead to the will being contested as invalid. Preprinted will forms may seem like an easy and inexpensive way to make a will, but it is easy to fill them out incorrectly, making the will invalid or failing to express your wishes. If you cannot afford an attorney, you may be eligible for advice or assistance from the Land Loss Prevention Project:

Land Loss Prevention Project  
1-800-672-5839  
<https://www.landloss.org>

### Other Available Estate Planning Documents