

# Appendix: State Estate Planning Laws

**This Appendix contains** a summary of the laws relating to estate planning issues for all states and the District of Columbia (Washington D.C.). It has been compiled directly from the most recently-available statutes and has been abridged for clarity and succinctness. It is recommended that you review the listing that pertains to your home state and any state in which you own real estate before you complete your estate plan. As you review your state's particular laws, keep in mind that your estate plan documents are going to be interpreted under the laws of the state where you resided at the time of your death. Your personal property will be also distributed according to the laws of the state in which you were a resident at the time of your death. Your real estate, however, will be distributed under the laws of the state in which it is located, regardless of where you were a resident.

Every effort has been made to ensure that the information contained in this Appendix is as complete and up-to-date as possible. However, state laws are subject to constant change. While most laws relating to estates are relatively stable, it is advisable to check your particular state statutes to be certain there have been no major modifications since this book was prepared, especially for those legal points that are particularly important in your situation. To simplify this process as much as possible, the exact name of the statute and the chapter or section number of where the information can be found is noted after each section of information. Any of these official statute books should be available at any public library or on the internet. A librarian will be glad to assist you in locating the correct book and in finding the appropriate pages.

The correct terminology for each state is used in these listings. However, some states use certain language interchangeably. In those states, the most commonly-used language is stated. Although it has been simplified to some extent, you will find that the language in the Appendix is somewhat more complicated than the language used in the rest of this book. This is due to the fact that much of the language in the Appendix has been taken directly from the laws and statutes of each state, and most legislators are lawyers. We apologize for this. We feel, however, that, as a reference, the technical details of the laws should be provided. Use the Glossary located at the end of this book to translate this language. Please note that you may view this Appendix (and increase the size of the type) on your computer by using the PDF format version that is included on the Forms-on-CD. The state-by-state listings following in this Appendix contain the following information for each state:

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**State Website:** This listing provides the internet website address of the location of the state's statutes. The addresses were current at the time of this book's publication; however, like most websites, the page addresses are subject to change. If an expired state webpage is not automatically redirected to a new site, laws can be searched at <http://www.findlaw.com>

**State Law Description:** This is the title where most of the relevant state laws on wills, living wills and probate are contained.

**Uniform Acts Adopted:** This listing notes the various Uniform Trust Acts relating to trusts that have been enacted and lists their citations (*i.e.*, Uniform Trustees' Powers Act, Uniform Gifts to Minors Act, etc.).

**Court with Probate Jurisdiction:** This listing provides the name of the particular court in each state that has exclusive jurisdiction over probate and will-related legal matters.

**Minimum Age for Disposing of Property by Will:** This listing details the minimum age for having a legally-valid will. For most states, this age is 18, but there are a few states that have differing laws.

**Required Number of Witnesses for Wills:** For most states, the *minimum* number of required witnesses is two. Be advised, however, that it is recommended to use at least three witnesses for your will. Some states will disqualify a witness that is a beneficiary and, if this happens, two additional witnesses are required for the will to be valid.

**Can Witnesses Be Beneficiaries?:** Under this listing is information regarding whether witnesses to the signing of the will can be beneficiaries under the will. Again, be advised that to be safe, your witnesses should *not* be beneficiaries.

**Are There Provisions for Self-Proving Wills?:** This listing details whether there are specific state law provisions for self-proving wills. All wills (except Louisiana) provided in this book are designed to be self-proving when completed as indicated.

**Are Holographic Wills Permitted?:** Under this listing, the name of any relevant state law regarding living wills is shown.

**How Does Divorce Affect the Will?:** The effect of divorce on the will under state law is shown in this listing. State law varies widely on this point and in some states a divorce may automatically revoke your entire will. It is highly recommended that you review and update your will if you are ever divorced.

**How Does Marriage Affect the Will?:** This listing provides the state law on the effect of marriage on the will. Again, state law provides various provisions and marriage may have the drastic effect of entirely revoking your will. It is, therefore, recommended that you review and update your will if you are ever married.

**Who Must Be Mentioned in the Will?:** Under this listing is shown which parties must be specifically mentioned

in the will. Certain parties must be mentioned in your will or they may be entitled to an intestate share of your estate regardless of your will. Most states provide this protection for children born after a will is made and for new spouses from a marriage that takes place after a will is prepared. However, it is recommended that you review and change your will if you adopt or have any new children, are married, or if any of your named beneficiaries die.

**Spouse's Right to Property Regardless of Will:** This listing provides the results of a spouse's right of election against the will. In all states, the surviving spouse has a right to a certain share of the deceased spouse's estate regardless of any provisions in the will of the deceased spouse that may give the surviving spouse less than this "statutory" or "community" property share.

**Laws of Intestate Succession (Distribution If No Will):** Under this listing the complex state provisions regarding intestate distribution of estates are outlined. This provides an overview of how your property would be distributed in the event that you die without a valid will. The laws in this area are extremely complex and differ widely from state to state. The outline of laws shown in this listing is intended to provide a simplified example of the particular state distribution scheme. If specific details of your state's distribution plan are needed, please consult the state statute directly.

A few definitions may be useful in deciphering the information listed in this section. The terms "per capita" and "per stirpes" are often used in these state plans. *Per capita* refers to a distribution to each member of a group equally. *Per stirpes* means distribution to a lower-level group based on "representation" in the upper level. For example, a parent has two children, each of whom have two grandchildren for a total of six descendants. However, one of the children died before the parent, leaving only five descendants. When the parent dies, a per capita distribution would divide the estate into five equal shares, with each descendant taking one-fifth. In a per stirpes distribution, the estate is divided into two equal halves; one for each original child's share. The living child takes one-half and the grandchildren who are children of the deceased child each take one-fourth. In effect, they share by "representation" their deceased parent's share of the estate. The grandchildren who are children of the living child would take nothing under a per stirpes distribution.

Another definition which may be useful is a "life estate." A *life estate* in real estate is provided to the surviving spouse in some states upon a spouse's death. A life estate means that the surviving spouse has the full use and enjoyment of any real estate for his or her entire life. However, upon his or her death, the property will pass automatically to the person who has the remaining share of the estate. Most often, this will be a child of the original, or first, deceased. The spouse who is given a life estate cannot leave such a property interest to anyone else.

**Property Ownership:** Whether the state follows the community property or common-law system of ownership of marital property is shown in this listing.

**State Gift, Inheritance, or Estate Taxes:** This listing shows the tax situation in each state as it relates to estates and wills. There are three basic taxes that apply: gift taxes, inheritance taxes, and estate taxes. Each individual state may impose any of these taxes and each tax rate may vary, depending on the state.

**Simplified Probate Procedures:** Under this listing are shown the various state exceptions to standard probate procedures. All states (except Georgia and Louisiana)) have some method by which small estates are exempted from formal probate procedures. They generally take two forms: a method of probate using affidavits, and/or an exemption from standard probate procedures for estates that fall below a certain dollar value.

**Living Will Form:** Under this listing, the exact location of a state's official Simplified Probate Procedures: Living Will Form is provided.

**Other Directives:** The existence and location of additional official state directives relating to advance health care and powers of attorney are indicated in this listing. Examples of such forms are Durable Power of Attorney for Health Care, Durable Power of Attorney for Financial Affairs, Anatomical Gift Act forms (organ donation forms), Designation of Primary Physician, and other related forms.

**Living Will Effective:** This listing indicates the requirements of state law regarding when a living will becomes effective. Most states require that two physicians must diagnose and document that a patient either has a terminal illness with no hope of recovery or is in a permanent state of unconsciousness, or some similar diagnosis.

**Living Will Witness Requirements:** Under this listing are noted the specific state requirements for witnesses to the signing of a living will and any related advance health care directives. In general, most states require that there are two witnesses, and that the witnesses be over eighteen, not related by blood or marriage to the declarant, not entitled to any part of the declarant's estate, and not financially responsible for the declarant's health care costs. Note that a few states require that, if the declarant is a patient in a nursing home or hospital, one of the witnesses be a patient advocate or patient ombudsman. In some states, the patient advocate or ombudsman is required to be a third witness, in addition to the other two required witnesses.

**Trustee Residency Requirements:** Here is noted if a trustee must be a resident of the state in which the trust is formed and any qualifications.

**Minimum Age for Grantor or Trustee:** This listing specifies the minimum age that a person must be to be either a grantor or trustee of a trust. There is no minimum age to be a beneficiary of a trust in any state.

**Trust-Writing Requirements:** Which trust provisions must be in writing are noted in this listing. All states require trusts relating to real estate to be in writing. Some states require that all trust provisions be in writing.

**Trust Pour-Over to Will:** The requirements for a trust that is used to add property to an existing will are noted in this section.

**Additional Trust Requirements:** Here are listed any additional state-specific requirements for trusts, such as registration of a trust, etc.

# Alabama

**State Website:** [www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm](http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm)

**State Law Reference:** Code of Alabama.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 43-8-140). Uniform Trustee Powers Act: (Section 19-3-322) Uniform Gift to Minors Act: (Sections 35-5A-1+).

**Court with Probate Jurisdiction:** Probate Court. (Section 12-13-1).

**Minimum Age for Disposing of Property by Will:** 18. (Section 43-8-130).

**Required Number of Witnesses for Signing of Will:** Two. (Section 43-8-131).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 43-8-134).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 43-8-132).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Sections 43-8-137 and 43-8-252).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 43-8-90).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 43-8-90 and 43-8-91).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to either: (a) all of the deceased spouse's estate, reduced by the value of the surviving spouse's "augmented" estate; or (b) 1/3 of the "augmented" estate of the deceased spouse. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy arrangement. (Section 43-8-70).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$100,000.00 and 1/2 of balance to spouse and 1/2 of balance to parent(s).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, to grandparents or their children per stirpes; or if none, to deceased spouse's next-of-kin. (Sections 43-8-41 and 43-8-42).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed if real estate is held jointly unless title creates joint tenancy with right of survivorship or similar words. No tenancy-by-the-entirety is recognized. Joint bank account deposits are payable to any survivor. (Section 35-4-7).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 40-15-1 to 40-15-19).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate for estates up to \$3,000 of personal property. (Section 43-2-690+).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$3,000 in personal property. (Section 43-2-692).

**Living Will Form:** Living Will (Section 22-8A-4).

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**Other Directives:** Anatomical Gift Act (Section 22-19-40).

**Living Will Effective:** Two (2) physicians, one being the attending physician, must diagnose and document in the medical records that you either have a terminal illness or injury or are in a permanent state of unconsciousness. (Section 22-8A-4).

**Living Will Witness Requirements:** Living will must be signed in the presence of two (2) or more witnesses at least nineteen (19) years of age. Witnesses cannot be related by blood, adoption, or marriage, entitled to any part of your estate, or be directly financially responsible for your health care. (Section 22-8A-4).

**Advance Health Care Directive:** Referred to as a Living Will. (Section 22-8A-4).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 22-8A-4).

**Durable Power of Attorney:** No state-specific form. Generic form is in book and on CD.(Section 26-1-2).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Nineteen (19). (Section 26-1-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. A trust holding personal or other property can be written or oral. (Section 8-9-2).

**Trustee Bond Requirements:** Trustee must provide bond of double the amount of the supposed value of the trust, unless waived by the trust itself. (Section 19-3-233).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 43-8-140).

**Additional Trust Requirements:** None.

## Alaska

**State Website:** [www.legis.state.ak.us/folhome.htm](http://www.legis.state.ak.us/folhome.htm)

**State Law Reference:** Alaska Statutes.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 13.06.005+). Uniform Testamentary Additions to Trusts Act: (Section 13.12.511). Uniform Transfer to Minors Act: (Sections 13.46.010+). Uniform Powers of Trustees Act: (Section 13.36.109).

**Court with Probate Jurisdiction:** Superior Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 13.12.501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 13.12.502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 13.12.505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 13.12.504).

**Are Holographic Wills Permitted?:** Yes. (Section 13.12.502).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 13.12.802).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 13.12.301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 13.12.202 and 13.12.302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the "augmented" estate of the deceased spouse. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy

arrangement. (Sections 13.12.202 and 13.12.203).

**Law of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$200,000.00 and 3/4 of balance to spouse and 1/4 of balance to parent(s).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, 1/2 to paternal grandparents and their children per stirpes and 1/2 to maternal grandparents and their children per stirpes. (Sections 13.12.102 and 13.12.103).

**Property Ownership:** Common-law state. However, spouses may, by written agreement, declare that any or all of their property is community property with a right of survivorship. No joint tenancy in real property (except for spouses). Persons with undivided interests in real estate are tenants-in-common. Spouses who acquire real estate hold it as tenants-by-the-entirety unless stated otherwise. Joint bank account deposits are payable to any survivor. (Sections 34.15.110 and 34.77.030).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 43.31.011 to 43.31.430).

**Simplified Probate Procedures:** Affidavit allowed for estates with personal property up to \$15,000.00. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 13.16.680, 13.16.690, and 13.16.695).

**Living Will Form:** Declaration Relating to Use of Life-Sustaining Procedures serves as Living Will (Section 13.52.300).

**Other Directives:** Anatomical Gift Act (Section 13.52.170 through 13.52.280).

**Living Will Effective:** Two (2) physicians determine that you are in a terminal condition and your death will result without using life-sustaining procedures. Your physician must then record your diagnosis and the contents of your Declaration in your medical records. (Section 13.52.300).

**Living Will Witness Requirements:** Sign your Declaration, or direct another to sign it, in the presence of two (2) adult witnesses or a notary public. Witnesses cannot be related by blood or marriage. (Section 13.52.300).

**Advance Health Care Directive:** (Section 13.52.300).

**Durable Power of Attorney for Health Care:** State specific form is part of Advance Health Care Directive. (Section 13.52.300)

**Durable Power of Attorney:** State specific form on CD. (Sections 13.26.332 and 13.26.353).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, trust must be registered. (Section 13.36.025).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 25.20.010).

**Trust-Writing Requirements:** All trusts must be in writing. (Sections 9.25.010 & 34.40.070).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 13.36.085).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 13.12.511).

**Additional Trust Requirements:** Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure



to register.

# Arizona

**State Website:** [www.azleg.state.az.us/](http://www.azleg.state.az.us/)

**State Law Reference:** Arizona Revised Statutes Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 14-1102+). Uniform Trustees' Powers Act: (Sections 14-7232 & 14-7233). Uniform Transfer to Minors Act: (Sections 14-7651+). Uniform Testamentary Additions to Trusts Act: (Section 14-2511).

**Court with Probate Jurisdiction:** Superior Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 14-2501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 14-2502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 14-2505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 14-2504).

**Are Holographic Wills Permitted?:** Yes. (Section 14-2503).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 14-2802).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 14-2301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 14-2301 and 14-2302).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. In addition, the surviving spouse is entitled to a one-time allowance of \$18,000.00. (Section 14-2402).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's separate property and 1/2 of decedent's community property to spouse and 1/2 of decedent's community property to children.

*Spouse and children not of spouse surviving:* 1/2 of decedent's separate property to spouse and 1/2 of decedent's separate property and all of decedent's community property to children.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, to the next-of-kin. (Sections 14-2102 and 14-2103).

**Property Ownership:** Community property state. Property acquired during marriage outside state before moving into state is quasi-community property. Joint tenancy with right of survivorship between spouses if stated. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. Allows beneficiary deeds to transfer property on death. (Section 25-211 and Section 33-431).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 42-4051 and 42-4052)

**Simplified Probate Procedures:** Affidavit and simplified probate allowed for estates up to \$50,000.00 (Sections 14-



3971.B, 14-3971.E, and 14-3973)

**Living Will Form:** Living Will (Sections 36-3261 and 36-3262).

**Other Directives:** Anatomical Gift Act (Sections 36-841 through 36-850).

**Living Will Effective:** For the living will to become operative, a physician must certify that your condition is terminal, irreversible, or incurable. (Section 36-3251)

**Living Will Witness Requirements:** Sign in the presence of one (1) or more witnesses or a notary public. Witnesses cannot be related by blood, adoption, or marriage, entitled to any part of your estate, or be directly financially responsible for your health care. (Section 36-3261 and 36-3221).

**Advance Health Care Directive:** Referred to as a Living Will. (Sections 36-3261 and 36-3261).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Sections 36-3221 through 36-3224)

**Durable Power of Attorney:** State specific form on CD.(Section 14-5501).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 8-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. A trust holding personal property can be written or oral. (Section 44-101).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or required by court order. (Section 14-7304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 14-2511).

**Additional Trust Requirements:** None.

## Arkansas

**State Website:** <http://www.arkleg.state.ar.us/>

**State Law Reference:** Arkansas Code.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 28-27-101+). Uniform Trustees' Powers Act: (Sections 28-69-033 & 28-69-304). Uniform Gifts to Minors Act: (Sections 9-26-201+).

**Court with Probate Jurisdiction:** Probate Court. (Section 28-1-104).

**Minimum Age for Disposing of Property by Will:** 18. (Section 28-25-101).

**Required Number of Witnesses for Signing of Will:** Two. (Section 28-25-102).

**Can Witnesses Be Beneficiaries?:** Yes, but still must have 2 other disinterested witnesses. (Section 28-25-102).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 28-25-106).

**Are Holographic Wills Permitted?:** Yes. (Section 28-25-104).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 28-25-109).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 28-25-109).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 28-39-401 and 28-39-407).

**Spouse's Right to Property Regardless of Will:** Intestate share: 1/3 of personal property and 1/3 of real estate for life. (Section 28-39-401).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Real estate: 1/3 life estate to spouse and 2/3 to children equally or their children per stirpes. Personal property: 1/3 to spouse and 2/3

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to children equally or their children per stirpes.

*Spouse and children not of spouse surviving:* Real estate: 1/3 life estate to spouse and 2/3 to children equally or their children per stirpes. Personal property: 1/3 to spouse and 2/3 to children equally or their children per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse if married over 3 years. If married less than 3 years, 1/2 to spouse and 1/2 to brothers and sisters equally or their children per stirpes; or if no siblings or siblings' children, all to ancestors (up to great-grandparents); or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse if married over 3 years. If married less than 3 years, 1/2 to spouse and 1/2 to parent(s).

*Children, but no spouse surviving:* All to children equally or to their children per capita.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, to grandparents and their children per stirpes. (Sections 28-9-204, 28-9-205, and 28-9-206).

**Property Ownership:** Common-law state. Property acquired in a community property state is community property. Tenancy-in-common and joint tenancy are recognized. Tenancy-by-the-entirety is recognized when conveyance is to husband and wife. Joint bank account deposits are payable to any survivor. Allows beneficiary deeds to transfer property on death. (Sections 18-12-106 and 18-12-603, and 23-47-204).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 26-59-101 to 26-59-122)

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate for estates up to \$100,000.00 plus some limited amounts for surviving spouse or children. (Section 28-41-101).

**Living Will Form:** Declaration serves as Living Will (Section 20-17-202).

**Other Directives:** Anatomical Gift Act (Section 20-17-1201+).

**Living Will Effective:** Declaration applies when two (2) physicians diagnose you to have an incurable or irreversible condition that will cause death in a relatively short time. (20-17-203).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses. No other restrictions apply. (Section 20-17-202).

**Advance Health Care Directive:** Referred to as a Declaration. (Section 20-17-202).

**Durable Power of Attorney for Health Care:** No state specific form. Generic form is included on Advance Health Care Directive. (Section 20-13-104).

**Durable Power of Attorney:** State specific form on CD.(Section 28-68-402).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Arkansas. (Section 4-31-202).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 9-25-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 4-59-103).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 28-4-201).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 28-27-101).

**Additional Trust Requirements:** None.

# California

**State Website:** [www.leginfo.ca.gov/](http://www.leginfo.ca.gov/)

**State Law Reference:** California Law.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Probate Code, Section 6300). Uniform Trustees' Powers Act: (Probate Code, Sections 16200+). Uniform Transfers to Minors Act: (Probate Code, Sections 3900+).

**Court with Probate Jurisdiction:** Superior Court.

**Minimum Age for Disposing of Property by Will:** 18. (Probate Code, Section 6100).

**Required Number of Witnesses for Signing of Will:** Two. (Probate Code, Section 6110).

**Can Witnesses Be Beneficiaries?:** Yes. (Probate Code, Section 6112).

**Are There Provisions for Self-Proving Wills?:** Yes. (Probate Code, Section 8221).

**Are Holographic Wills Permitted?:** Yes. (Probate Code, Section 6111).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Probate Code, Section 6122).

**How Does Marriage Affect the Will?:** Revokes the will as to the surviving spouse. However, spouse may still be entitled to statutory share. (Probate Code, Section 21610).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren of deceased child; surviving spouse. (Probate Code, Sections 21610 and 21620).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Probate Code, Section 100).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's community property to spouse. If 1 child, 1/2 of decedent's separate property to spouse and 1/2 to child per stirpes. If more than 1 child, 1/3 of decedent's separate property to spouse and 2/3 to children per stirpes.

*Spouse and children not of spouse surviving:* 1/2 of community property, 1/3 life estate in separate real property, and 1/3 separate personal property to spouse; balance to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All of decedent's community property to spouse. 1/2 of decedent's separate property to spouse and 1/2 of decedent's separate property to brothers and sisters equally or to their children per stirpes; or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* All of decedent's community property to spouse. 1/2 of decedent's separate property to spouse and 1/2 of decedent's separate property to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, to the next-of-kin. (Probate Code, Sections 6401 and 6402).

**Property Ownership:** Community property state. Property in names of spouses as joint tenants is not community property unless stated. Joint tenancy with right of survivorship must be stated. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to survivor if account had rights of survivorship stated. Allows transfer-on-death vehicle titles. (Family Code, Sections 750, 760, and 770 and Civil Code, Section 683).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Revenue and Taxation Code, Sections 13301 and 13302).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,000.00. Simplified probate allowed for estates up to \$100,000.00 (unlimited amount for surviving spouse's community property). (Probate Code, Section 13050, 13100+, 13200+, and 13500+).

**Living Will Form:** California Advanced Health Care Directive serves as Living Will (Probate Code, Section 4701)

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**Other Directives:** Anatomical Gift Act (Health and Safety Code, Sections 7150 +).

**Living Will Effective:** This Directive becomes effective in the event that you have an incurable and irreversible condition that will result in death within a relatively short time, become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected benefits. (Probate Code, Section 4701).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be the person you appointed as your agent, your health care provider or an employee of your health care provider, or the operator or employee of a residential care facility for the elderly. Witnesses cannot be related to you by blood, marriage, or adoption, or be entitled to any part of your estate. A third witness, who must be a patient advocate or ombudsman, is required if the patient is in a skilled nursing facility (Probate Code, Section 4701).

**Advance Health Care Directive:** (Probate Code, Section 4701).

**Power of Attorney for Health Care:** State specific form is part of Advance Health Care Directive. (Probate Code, Sections 4701, 4673, 4674, and 4675).

**Durable Power of Attorney:** State specific form on CD. (Probate Code, Sections 4120 +).

**Trustee Residency Requirements:** Out-of-state trustee's actions are severely restricted, please refer directly to the statute. (Probate Code, Sections 17003 & 17005).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Family Code, Section 6500-02).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. Trusts holding personal property need clear and convincing evidence if not in writing. (Probate Code, Sections 15206 & 15207).

**Trustee Bond Requirements:** None, unless required by the trust or court order. (Probate Code, Section 15602).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Probate Code, Section 6300).

**Additional Trust Requirements:** When a living trust becomes irrevocable in California (upon the death of the grantor or surviving grantor), the trustee must notify all beneficiaries of the trust in writing. There are specific requirements for the notice which are contained in California Probate Code, Section 16061.5+.

## Colorado

**State Website:** [www.leg.state.co.us/](http://www.leg.state.co.us/)

**State Law Reference:** Colorado Revised Statutes.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 15-10-101+ and 15-11-101+). Uniform Testamentary Additions to Trusts Act: (Section 15-11-511). Uniform Trustees' Powers Act: (Section 15-1-804). Uniform Gifts to Minors Act: (Sections 11-50-101+).

**Court with Probate Jurisdiction:** District Court (Probate Court in Denver). (Section 13-9-103).

**Minimum Age for Disposing of Property by Will:** 18. (Section 15-11-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 15-11-502(1)(c)).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 15-11-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 15-11-504).

**Are Holographic Wills Permitted?:** Yes. (Section 15-11-502(2)).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 15-11-804).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 15-11-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 15-11-301 and 15-11-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/2 of the "augmented" estate of the deceased spouse. However, the amount is also dependent on the length of the marriage in years. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy arrangement. (Section 15-11-201).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Spouse receives entire estate. (Section 15-11-102(1)(b)).

*Spouse and children not of spouse surviving:* \$150,000.00 and 1/2 to spouse and 1/2 to children and grandchildren per stirpes. (Section 15-11-102(3)).

*Spouse, but no children or parent(s) surviving:* \$200,000.00 and 3/4 of remainder to spouse, 1/4 to parent(s). (Section 15-11-102(1)(A)).

*Spouse and parent(s), but no children surviving:* All to spouse. (Section 15-11-102(2)).

*Children, but no spouse surviving:* All to children equally or to their children per capita at each generation. (Section 15-11-103(1)).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 15-11-103(2)).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per capita at each generation; or if none, to grandparents and their children per capita at each generation; or if none, to nearest lineal ancestors and their children. (Section 15-11-102).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless otherwise stated. Joint tenancy is recognized. Tenancy-by-the-entirety is not recognized. Allows beneficiary deeds to transfer property on death. (Section 38-11-101).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 39-23.5+).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00. Simplified probate allowed for up to value of exempt property allowance, family allowances, last illness and burial expenses. (Sections 15-12-1201 and 15-12-1203).

**Living Will Form:** Colorado Declaration as to Medical or Surgical Treatment serves as Living Will (Section 15-18-103).

**Other Directives:** Anatomical Gift Act (Section 12-34-101).

**Living Will Effective:** Two (2) physicians must determine that you are in a terminal condition and your death will result without using life-sustaining procedures. Your physician must then record your diagnosis and the contents of your Declaration in your medical records. (Sections 15-18-103 and 15-18-104).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, or a physician, an employee of your attending physician or treating health care facility, or a patient of your treating health care facility. (Sections 15-18-105 and 15-18-106).

**Advance Health Care Directive:** Referred to as a Declaration as to Medical or Surgical Treatment. (Section 15-18-104).

**Durable Power of Attorney for Health Care:** State specific form is part of Advance Health Care Directive. (Section 15-14-506).

**Durable Power of Attorney:** State specific form on CD. (Sections 15-1-1301+, 15-14-501+, and 15-14-601+).

**Trustee Residency Requirements:** Trust managed by out-of-state trustee must be registered. (Section 15-16-105).

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**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 13-22-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 38-10-118).

**Trustee Bond Requirements:** None unless required by trust or beneficiary. (Section 15-16-304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 15-15-101).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust. Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

## Connecticut

**State Website:** [www.cga.ct.gov/](http://www.cga.ct.gov/)

**State Law Reference:** Connecticut General Statutes Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 45a-260). Uniform Gifts to Minors Act: (Sections 45a-557+). Uniform Trustees' Powers Act: (Sections 45a-234+).

**Court with Probate Jurisdiction:** Probate Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 45a-250).

**Required Number of Witnesses for Signing of Will:** Two. (Section 45a-251).

**Can Witnesses Be Beneficiaries?:** Yes, but must still have 2 other disinterested witnesses. (Section 45a-258).

**Are There Provisions for Self-Proving Wills?:** Yes.

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will completely. (Section 45a-257c).

**How Does Marriage Affect the Will?:** Revokes the will completely unless spouse was not a beneficiary under the will. (Section 45a-257a).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Section 45a-257).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's real estate and personal property for the rest of his or her life. (Section 45a-436).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$100,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. (Section 45a-437(3)).

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes. (Sections 45a-437(4) and 45a-438).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 45a-437(1)).

*Spouse and parent(s), but no children surviving:* \$100,000.00 and 3/4 of balance to spouse and 1/4 of balance to parents or surviving parent. (Section 45a-437(2)).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes. (Section 45a-438).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 45a-439(a)(1)).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes; or if none, to next-of-kin. (Section 45a-439(2)-(3)).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless words "joint tenants" follow names. Joint tenancy automatically includes right of survivorship. Tenancy-by-the-entirety is recognized. Allows transfer-on-



death vehicle titles. (Section 47-14a).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax. (Sections 12-391 to 12-398).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$20,000.00 in personal property. (Section 45a-273).

**Living Will Form:** Connecticut Health Care Instructions serves as Living Will (Section 19a-575).

**Other Directives:** Anatomical Gift Act (Section 19a-279+).

**Living Will Effective:** When you have an incurable or irreversible medical condition which, without the use of life support, will result in death in a relatively short period of time, or you are in a permanent coma or a persistent vegetative state. (Section 19a-575).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Your appointed agent cannot be a witness. If you reside in a resident facility operated or licensed by the department of mental health or department of mental retardation, additional Living Will Witness Requirements must be met and you should consult an attorney. (Sections 19a-575 and 19a-576).

**Advance Health Care Directive:** Referred to as Connecticut Health Care Instructions. (Section 19a-575).

**Health Care Power of Attorney:** Connecticut Health Care Instructions also contain Appointment of Health Care Agent and Appointment of Attorney-In-Fact for Health Care Decisions. State specific form is part of Advance Health Care Directive. (Section 19a-575).

**Durable Power of Attorney:** State specific form on CD. (Section 45a-562).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, then a resident agent must also be appointed. (Section 45a-477).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Sections 1-1(d) and 1-56(r)).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 52-550).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 45a-473).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 45a-260).

**Additional Trust Requirements:** None.

## Delaware

**State Website:** [www.delcode.delaware.gov/index.shtml](http://www.delcode.delaware.gov/index.shtml)

**State Law Reference:** Delaware Code Annotated.

**Uniform Acts Adopted:** Uniform Gifts to Minors Act: (Sections 12-4501+).

**Court with Probate Jurisdiction:** Chancery Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 12-201).

**Required Number of Witnesses for Signing of Will:** Two. (Section 12-202).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 12-203).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 12-1305).

**Are Holographic Wills Permitted?:** No. (Section 12-202).

**Are Living Wills Recognized?:** Yes. (Sections 16-2501 to 16-2518).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. The surviving spouse may still claim his or her statutory share of the decedent's estate. (Section 12-323).



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**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 12-301 to 12-321).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's estate or \$20,000.00, whichever is less. (Section 12-901(a)).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Real estate: life estate to spouse and all the rest to children or grandchildren per stirpes. Personal property: \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. (Section 12-502(3)).

*Spouse and children not of spouse surviving:* Real estate: life estate to spouse and all the rest to children or grandchildren per stirpes. Personal property: 1/2 to spouse and 1/2 to children or grandchildren per stirpes. (Section 12-502(4)).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 12-502(1)).

*Spouse and parent(s), but no children surviving:* Real estate: life estate to spouse; remainder to parents or surviving parent. Personal property: \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent. (Section 12-502).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes. (Section 12-503(1)).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 12-503(2)).

*No spouse, children, or parent(s) surviving:* All to brothers or sisters or their children per stirpes; or if none, to the next-of-kin per stirpes. (Section 12-503(3)(4)).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed. If joint owners are married, tenancy-by-the-entirety is created. Joint tenancy created only if stated. Joint bank account deposits are payable to any survivor. (Sections 25-309, 25-311, and 25-701).

**State Gift, Inheritance, or Estate Taxes:** No inheritance tax; no state estate tax. (Sections 30-1501+)

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$30,000.00 in personal property. However, beneficiaries can only be relatives of decedent, trustee, or funeral director. No simplified probate procedure. (Section 12-2306).

**Living Will Form:** Instructions for Health Care serves as Living Will (Section 16-2503).

**Other Directives:** Anatomical Gift Act (Sections 16-2710 - 16-2719).

**Living Will Effective:** Two (2) physicians determine in writing that you have a terminal condition and/or are in a permanent state of unconsciousness. (Section 16-2505).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, be directly financially responsible for your health care, or be an owner, operator, or employee of a residential long-term health care institution in which you reside. If declarant is a patient in a nursing home, one of the witnesses must be a patient advocate or ombudsman. (Sections 16-2503 and 16-2505).

**Advance Health Care Directive:** Referred to as Instructions for Health Care. Delaware Advance Directive contains Power of Attorney for Health Care and Instructions for Health Care. (Section 16-2503).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 16-2503).

**Durable Power of Attorney:** No state-specific form. Generic form is in book and on CD.(Section 12-4901+).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 1-701).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 6-2714).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 12-211).

**Additional Trust Requirements:** None.

# District of Columbia (Washington D.C.)

**State Website:** <http://government.westlaw.com/linkedslice/default.asp?SP=DCC-1000>

**State Law Reference:** District of Columbia Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 18-306). Uniform Transfers to Minors Act: (Sections 21-301+). Uniform Fiduciaries Act: (Sections 21-1701+).

**Court with Probate Jurisdiction:** Superior Court. (Section 16-3101).

**Minimum Age for Disposing of Property by Will:** 18. (Section 18-102).

**Required Number of Witnesses for Signing of Will:** Two. (Section 18-103).

**Can Witnesses Be Beneficiaries?:** No, if they are eligible to take any portion of the estate under District intestacy law. (Section 18-104).

**Are There Provisions for Self-Proving Wills?:** No provision.

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Does not revoke the will. (Section 18-109).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 18-109).

**Who Must Be Mentioned in the Will?:** Surviving spouse. (Sections 19-113).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's estate. (Sections 19-113 and 19-302).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse and decedent surviving:* Real estate: 2/3 to spouse 1/3 to children.

*Spouse and both children of spouse and children of spouse but not of decedent surviving:* 1/2 to spouse, and 1/2 to children of spouse and decedent.

*Spouse and any children of decedent who are not children of surviving spouse:* 1/2 to spouse, and 1/2 to decedent's children.

*Spouse, but no children, grandchildren, or parent(s) surviving:* all to spouse.

*Spouse and parent(s), but no children surviving:* 3/4 to spouse, and 1/4 to parent(s).

*Children but no spouse surviving:* all to the children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* all to parent(s) equally, or to surviving parent.

*No spouse, children, or parent(s) surviving:* all to brothers and sisters or their children per stirpes, or if none, to collaterals; or if none, to grandparent(s). (Sections 301-302 and 305-312)

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy is stated. Joint ownership by husband and wife is presumed to be tenancy-by-the-entirety. Joint bank account deposits are payable to any survivor. (Section 42-516).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes limited state estate tax. (Sections 47-3701 to 47-3723).

**Simplified Probate Procedures:** Affidavit allowed if estate is only up to two automobiles, after all debts are paid. Simplified probate allowed for estates up to \$40,000.00. (Section 20-351+).

**Living Will Form:** District of Columbia Declaration serves as Living Will (Section 7-622).

**Other Directives:** Anatomical Gift Act (Section 7-1521.04).

**Living Will Effective:** Two (2) physicians determine that you are in a terminal condition and your death will result without using life-sustaining procedures. Your physician must then record your diagnosis and the contents of your Declaration

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in your medical records. (Sections 7-621 and 7-622).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be your appointed attorney-in-fact, health care provider, or an employee of your health care provider. Witnesses also cannot be related by blood, marriage, or adoption, stand to inherit from your estate, or be financially responsible for your health care. (Section 7-622).

**Advance Health Care Directive:** Referred to as a Declaration. (Section 7-622).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 21-2207).

**Durable Power of Attorney:** State specific form on CD. (Section 21-2081).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 30-401).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 28-3503).

**Trustee Bond Requirements:** Yes, if appointed by court or can be waived by the trust itself. (Section 16-601).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 18-306).

**Additional Trust Requirements:** None.

## Florida

**State Website:** <http://www.flsenate.gov/statutes/index.cfm>

**State Law Reference:** Florida Statutes Annotated.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 737.401+). Uniform Testamentary Additions to Trusts Act: (Section 732.513). Uniform Transfers to Minors Act: (Section 710).

**Court with Probate Jurisdiction:** Circuit Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 732.501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 732.502(1)(b)).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 732.504).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 732.503).

**Are Holographic Wills Permitted?:** No. (Section 732.502).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 732.507(2)).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse will still be entitled to his or her statutory share under the state intestate laws regardless of prior will. (Section 732.301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 732.301 and 732.302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 30 percent of the deceased spouse's estate. [Note: the head of a household is prohibited from leaving a family home in his or her will to anyone other than a child or a spouse, if either are alive.]. (Section 732.2065 and Florida Constitution Article 10, Section 4).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$60,000.00 and 1/2 of balance to spouse and 1/2 of balance to children and grandchildren per stirpes. (Sections 732.102) and 732.103). *Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children and grandchildren per stirpes. (Section 732.102).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 732.102).

*Spouse and parent(s), but no children surviving:* All to spouse. (Section 732.102).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes. (Section 732.103).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 732.103).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children per stirpes; or if none, 1/2 to maternal next-of-kin and 1/2 to paternal next-of-kin beginning with grandparents. (Section 732.103).

**Property Ownership:** Common-law state. Personal property or real estate owned by husband and wife is presumed to be a tenancy-by-the-entirety with survivorship. Joint tenancy includes survivorship only if stated. Joint bank account deposits are payable to any survivor. (Sections 689.11 and 689.15).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes limited state estate tax. (Sections 198.01 to 198.44).

**Simplified Probate Procedures:** Affidavit allowed for very small estates of only personal property. Simplified probate allowed for estate up to \$75,000.00 that is not subject to creditor's claims. (Sections 735.201+, and 735.301).

**Living Will Form:** Living Will (Section 765-303).

**Other Directives:** Anatomical Gift Act (Sections 765.510 - 765.546).

**Living Will Effective:** Two (2) physicians determine in writing that you have a terminal condition, and/or are in a permanent state of unconsciousness and can no longer make your own health care decisions. (Section 765.306).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. At least one (1) of your witnesses must not be related to you by marriage or blood. (Section 765.302).

**Advance Health Care Directive:** Referred to as a Living Will. (Section 765.303).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 765.203).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 709.08).

**Trustee Residency Requirements:** If requested by beneficiary or directed by trust, an out-of-state trustee must register the trust. (Section 737.105).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 744.102).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 689.05).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 737.304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 732.513).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust. Additionally, residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

## Georgia

**State Website:** [www.legis.state.ga.us](http://www.legis.state.ga.us)

**State Law Reference:** Code of Georgia Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 53-12-71). Uniform Trustees' Powers Act: (Section 53-12-55). Uniform Gifts to Minors Act: (Sections 44-5-110+). Georgia Transfer to Minors Act. (Sections 45-5-110+).

**Court with Probate Jurisdiction:** Probate Court. (Section 15-9-30).

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**Minimum Age for Disposing of Property by Will:** 14. (Section 53-4-10).

**Required Number of Witnesses for Signing of Will:** Two. (Section 53-4-20).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a witness who is a beneficiary is void unless there are also 2 other disinterested witnesses. (Section 53-4-23).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 53-4-24).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will completely unless expressly provided otherwise. (Section 53-4-49).

**How Does Marriage Affect the Will?:** Revokes the will completely unless expressly provided otherwise. (Section 53-4-48).

**Who Must Be Mentioned in the Will?:** Statute contains detailed provisions regarding this matter. Please refer directly to statute text or consult an attorney if this is a critical factor. (Section 53-4-48).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1 year's support from the deceased spouse's estate. (Section 53-3-1).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Children or grandchildren and spouse all take equal shares with at least 1/4 to spouse. (Section 53-2-1).

*Spouse and children not of spouse surviving:* Children or grandchildren and spouse all take equal shares with at least 1/4 to spouse. (Section 53-2-1).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 53-2-1).

*Spouse and parent(s), but no children surviving:* All to spouse. (Section 53-2-1).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes. (Section 53-2-1).

*Parent(s), but no spouse or children surviving:* All to parents, brothers, and sisters equally or to their children per stirpes. (Section 53-2-1).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children per stirpes; or if none, to paternal and maternal next-of-kin. (Section 53-2-1).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless "joint tenants" or similar language is stated specifically. Joint tenancy can only be created in document of transfer (such as a deed). Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Section 44-6-120).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes limited state estate tax. (Sections 48-12-1 to 48-12-6).

**Simplified Probate Procedures:** No affidavit or simplified probate procedure allowed.

**Living Will Form:** Georgia Living Will (Section 31-32-3).

**Other Directives:** Anatomical Gift Act (Section 44-5-140).

**Living Will Effective:** Two (2) physicians determine in writing that you have a terminal condition, and/or are in a permanent state of unconsciousness. (Sections 31-32-2 and 31-32-8).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, be directly financially responsible for your health care, or be an owner, operator, or employee of a health care institution in which you are a patient. Witnesses also cannot be related by blood or marriage. (Section 31-32-5).

**Advance Health Care Directive:** Referred to as Georgia Advance Directive for Health Care. (Section 31-32-4).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 31-32-4).

**Durable Financial Power of Attorney:** State specific form on CD.(Sections 10-6-140 through 10-6-142).

**Trustee Residency Requirements:** None. (Section 53-12-24).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 53-12-22).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 13-5-30).

**Trustee Bond Requirements:** Court may require a successor trustee to post bond; otherwise, no bond unless required by trust or requested by beneficiary. (Section 53-12-174).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 53-12-71).

**Additional Trust Requirements:** None.

## Hawaii

**State Website:** <http://www.capitol.hawaii.gov/>

**State Law Reference:** Hawaii Revised Statutes.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 560:1-101+). Uniform Trustees' Powers Act: (Sections 554A-3 & 560:7-401). Uniform Testamentary Additions to Trusts Act: (Section 560:2-511). Uniform Gifts to Minors Act: (Sections 553A-1+).

**Court with Probate Jurisdiction:** Circuit Court. (Section 603-21.6).

**Minimum Age for Disposing of Property by Will:** 18. (Section 560:2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 560:2-502(3)).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 560:2-505(b)).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 560:2-504).

**Are Holographic Wills Permitted?:** Yes. (Sections 560:2-502(b) and 560:2-503).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 560:2-802).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 560:2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 560:2-301 and 560:2-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/2 of the community property on the death of the other spouse. The surviving spouse's right to additional property regardless of provisions in the will depends on the length of the marriage. Please refer to the statute for details. (Section 510:10 and 560:2-202).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse. (Section 560:2-102(1)(A)).

*Spouse and children not of spouse surviving:* \$150,000.00 and 1/2 of remaining estate to spouse and 1/2 to children equally or to the grandchildren. (Section 560:2-102(3)).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 560:2-102(1)(A)).

*Spouse and parent(s), but no children surviving:* \$200,000.00 and 3/4 of remaining estate to spouse and 1/4 to parents equally or surviving parent. (Section 560:2-102(2)).

*Children, but no spouse surviving:* All to children equally or to their children per stirpes. (Section 560:2-103(1)).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 560:2-103(a)).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children per stirpes; or if none, to grand-



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parents; or if none, to uncles and aunts equally. (Section 560:2-103(3)(4)).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy or tenancy-by-the-entirety is stated. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to a specified survivor. [Note: a community property system was in effect in Hawaii from 1945 to 1949. Community property established during this time period is governed under Section 510] (Sections 509-1, 509-2, and 510-22+).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Section 236D-3).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,00.00 of personal property. No simplified probate procedures. (Sections 560:3-1201+ and 560:3-1203+).

**Living Will Form:** Instruction for Health Care serves as Living Will (Section 327E-3).

**Other Directives:** Anatomical Gift Act (Section 327-1).

**Living Will Effective:** In the event that you have an incurable and irreversible condition that will result in death within a relatively short time, become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected benefits. (Section 327E-3).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. At least one (1) of your witnesses cannot be related to you by marriage or blood or entitled to any part of your estate. A witness cannot be the person you appoint as your agent, health care provider, or an employee of your health care provider. (Section 327E-3).

**Advance Health Care Directive:** Referred to as Instructions for Health Care. (Section 327E-3).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 327E-3).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Sections 551D-1 through 551D-7).

**Trustee Residency Requirements:** If out-of-state trustee is appointed to a living trust, the trust must be registered. (Section 560:7-101).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 577-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 656-1).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 560:7-304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 560:2-511).

**Additional Trust Requirements:** Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

Idaho

**State Website:** <http://www3.state.id.us/>

**State Law Reference:** Idaho Code.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 15-1-101+). Uniform Trustees' Power Act. (Sections 15-7-401 & 15-7-402). Uniform Testamentary Additions to Trusts Act: (Section 15-2-511). Uniform Gifts to Minors Act: (Sections 68-801+).

**Court with Probate Jurisdiction:** District Court. (Section 1-103).

**Minimum Age for Disposing of Property by Will:** 18, or emancipated from parents. (Section 15-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 15-2-502).



**Can Witnesses Be Beneficiaries?:** Yes. (Section 15-2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 15-2-504).

**Are Holographic Wills Permitted?:** Yes. (Section 15-2-503).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 15-2-802).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 15-2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 15-2-301 and 15-2-302).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Section 15-2-301).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's community property to spouse; \$50,000.00 and 1/2 of balance of decedent's separate property to spouse and 1/2 of balance to children or grandchildren per stirpes. (Sections 15-2-102(1)(3) and 15-2-103(a)).

*Spouse and children not of spouse surviving:* All of decedent's community property to spouse; 1/2 of decedent's separate property to spouse and 1/2 to children or grandchildren per stirpes. (Section 15-2-102(a)).

*Spouse, but no children or parent(s) surviving:* All to spouse. (Section 15-2-102(a)(1)).

*Spouse and parent(s), but no children surviving:* All of decedent's community property to spouse; \$50,000.00 and 1/2 of balance of decedent's separate property to spouse and 1/2 of balance to parents or surviving parent. (Section 15-2-102(a)(2)).

*Children, but no spouse surviving:* All to children or to their children per stirpes. (Section 15-2-103(a)).

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent. (Section 15-2-103(b)).

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children, if surviving. If not, then 1/2 to living maternal grandparents or their children and 1/2 to paternal grandparents or their children. (Section 15-2-103(d)).

**Property Ownership:** Community property state. Tenancy-in-common is presumed unless joint tenancy is stated or property is acquired as partnership or as community property. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Sections 32-903 and 32-906, and Section 55-508).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 14-401 to 14-413).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,000 of personal property. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 15-3-1201+ and 15-3-1203+).

**Living Will Form:** Idaho Living Will (Section 39-4510).

**Other Directives:** Anatomical Gift Act (Section 39-3401).

**Living Will Effective:** Two (2) physicians determine that you are in a terminal condition, your death will result without using life-sustaining procedures, or you are in a persistent vegetative state. (Section 39-4510).

**Living Will Witness Requirements:** Although Idaho does not have any witness requirements, we suggest that you sign in the presence of two adult witnesses or a notary public, and we suggest that witnesses should not be your appointed attorney-in-fact, your health care provider, or a person related to you by blood, marriage or adoption.

**Advance Health Care Directive:** Referred to as Idaho Living Will. (Section 39-4510).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 39-4510).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 15-5-501+).

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**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Idaho. A trustee, whether a resident or not, must register the trust. (Section 15-7-105).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 32-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 9-503).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 15-7-304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 15-2-511).

**Additional Trust Requirements:** Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

## Illinois

**State Website:** <http://www.ilga.gov/>

**State Law Reference:** Illinois Compiled Statutes.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (755 ILCS 4-4). Uniform Gifts to Minors Act: (755 ILCS 5/11-1). Uniform Trustees' Powers Act: (755 ILCS 4-1+).

**Court with Probate Jurisdiction:** Circuit Court. (755 ILCS 5/1+)

**Minimum Age for Disposing of Property by Will:** 18. (755 ILCS 5/4-1).

**Required Number of Witnesses for Signing of Will:** Two. (755 ILCS 5/4-3).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. However, a witness-beneficiary may still receive his or her intestate share. (755 ILCS 5/4-3).

**Are There Provisions for Self-Proving Wills?:** Yes. (755 ILCS 5/4-6).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes will as to the divorced spouse. (755 ILCS -5/4-7).

**How Does Marriage Affect the Will?:** Does not revoke the will. (755 ILCS 5/4-7).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (755 ILCS 5/4-10 and 755 ILCS 5/15-1).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children and to only 1/3 if there are children. However, please refer directly to the statute as the provisions are detailed. (755 ILCS 5/2-8).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children equally or to the grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children equally or to the grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents, brothers, sisters, or children of brothers and sisters per stirpes. If only 1 surviving parent, he or she takes a double share.

*No spouse, children, or parent(s) surviving:* 1/2 to maternal grandparents and 1/2 to paternal grandparents equally or to surviving grandparent; or if none, to their children per stirpes; or if none, 1/2 to maternal great-grandparents and 1/2 to paternal great-grandparents equally or to surviving great-grandparent; or if none, to their children per stirpes; or if none of the above, all to the next-of-kin. (755 ILCS 5/2-1).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed. Joint tenancy with right of survivorship created only by statement that property is held in joint tenancy and not tenancy-in-common. Tenancy-by-the-entirety is recognized only for real estate. Joint bank account deposits are payable to any survivor. (205 ILCS 105/4 to 205 ILCS 105/8 and 765 ILCS 1005/1 to 765 ILCS 1005/4a).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; state estate tax based on federal estate tax. (35 ILCS 405/1 to 35 ILCS 405/18).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,000.00 in personal property. Simplified probate allowed for estates up to \$100,000.00 if all heirs and beneficiaries consent in writing. (755 ILCS 5/25-1+).

**Living Will Form:** Illinois Declaration serves as Living Will (755 ILCS 35/3).

**Other Directives:** Anatomical Gift Act (755 ILCS 50).

**Living Will Effective:** If death would occur without the use of death-delaying procedures. Your physician must personally examine you and certify in writing that you are terminally ill. (755 ILCS 35/2).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Witnesses cannot be entitled to any part of your estate or financially responsible for your medical care. (755 ILCS 35/3).

**Advance Health Care Directive:** Referred to as Illinois Declaration (755 ILCS 35/3)

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (755 ILCS 45/4-1+)\_)

**Durable Power of Attorney:** State specific form on CD.(755 ILCS 45/2-1+).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (760 ILCS 5/11-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (740 ILCS 80/9).

**Trustee Bond Requirements:** None, unless required by trust.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (755 ILCS 4-4).

**Additional Trust Requirements:** None.

# Indiana

**State Website:** <http://www.in.gov/legislative/ic/code/>

**State Law Reference:** Indiana Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 29-1-6-1). Uniform Gifts to Minors Act: (Sections 30-2-8.5-1+). Uniform Trustees' Powers Act: (Section 30-4-3-3).

**Court with Probate Jurisdiction:** Circuit or Superior Court (Probate Court in St. Joseph and Vigo Counties).

**Minimum Age for Disposing of Property by Will:** 18, however, no minimum age if a member of Armed Forces or Merchant Marines. (Section 29-1-5-1).

**Required Number of Witnesses for Signing of Will:** Two. (Section 29-1-5-3).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void. However, if the witness-beneficiary is entitled to receive an intestate share of the estate, he or she may receive the lesser of the intestate share or the property gifted to him or her under the will. (Section 29-1-5-2).

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**Are There Provisions for Self-Proving Wills?:** Yes. (Section 29-1-5-3).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 29-1-5-8).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 29-1-5-8).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 29-1-3-1 and 29-1-3-8).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/2 of the deceased spouse's estate. If there are surviving children of a prior spouse, a second or subsequent spouse is entitled to 1/3 of the deceased's personal property and 1/3 of the deceased's real estate for the rest of his or her life. (Section 29-1-3-1).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children.

*Spouse and children not of spouse surviving:* Real estate: an amount equal to 1/4 of the fair market value of real estate to spouse and balance to children. Personal property: 1/2 to spouse and 1/2 to children.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* 3/4 to spouse and 1/4 to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or their children per stirpes.

*Parent(s), brothers, sisters, and children of brothers and sisters, but no spouse or children surviving:* Surviving parents, brothers, sisters all share equally, but each surviving parent is entitled to at least 1/4 of estate.

*No spouse, children, parent(s), or brothers or sisters surviving:* All to brothers' and sisters' children per stirpes; or if none, to grandparents; or if none, to aunts and uncles per stirpes. (Section 29-1-2-1).

**Property Ownership:** Common-law state. Joint tenancy, tenancy-in-common, and tenancy-by-the-entirety are recognized. Tenancy-in-common is presumed unless joint tenancy stated. Joint ownership by husband and wife is presumed to be a tenancy-by-the-entirety (for real estate only). Joint bank account deposits are payable to any survivor. (Section 6-4.1-8-4 and 32-17-2-1, 32-17-3-1).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of up to 20 percent; imposes state estate tax. (Sections 6-4.1-5-1 and 6-4.1-11-2).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00 in personal property. Simplified probate allowed for estates up to \$50,000.00. (Sections 29-1-8-1, and 29-1-8-3+).

**Living Will Form:** Indiana Living Will Declaration (Section 16-36-4-10).

**Other Directives:** Anatomical Gift Act (Section 29-2-16-1).

**Living Will Effective:** Your physician must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 16-36-4-10).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Witnesses cannot be entitled to any part of your estate, related to you by blood or marriage, financially responsible for your medical care, or be the person who signed the Declaration on your behalf. (Section 16-36-4-8).

**Advance Health Care Directive:** Referred to as Indiana Living Will Declaration. (Section 16-36-4-10).

**Health Care Power of Attorney:** State specific form is part of the Advance Health Care Directive. (Section 16-36-4-10).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 29-3-5).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Sections 30-4-2-10 & 30-4-2-11).

**Trust-Writing Requirements:** Yes.

**Trustee Bond Requirements:** None, unless required by trust. (Section 30-4-6-8).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 29-1-6-1).

**Additional Trust Requirements:** None.

# Iowa

**State Website:** <http://www.legis.state.ia.us/>

**State Law Reference:** Iowa Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 633-275+). Uniform Gifts to Minors Act: (Sections 565B.1+). Uniform Trustees' Powers Act: (Section 633.699).

**Court with Probate Jurisdiction:** District Court. (Section 633.10).

**Minimum Age for Disposing of Property by Will:** 18 ("full age"). (Section 633.264).

**Required Number of Witnesses for Signing of Will:** Two. (Section 633.279).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. However, a witness-beneficiary is still entitled to receive any intestate share. (Section 633.281).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 633.279).

**Are Holographic Wills Permitted?:** No provision.

**Are Living Wills Recognized?:** Yes, under the "Iowa Life Sustaining Procedures Act." (Sections 144A.1 to 144A.12).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse unless he or she remarries. (Section 633.271).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 633.236).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 633.236 and 633.267).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's estate. (Section 633.238).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children per stirpes; or if none, to ancestors and their children per stirpes; or if none, to spouse or heirs of spouse. (Sections 633.211, 633.212, and 633.219).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy stated. Tenancy-by-the-entirety not recognized. Joint bank account deposits are payable to any survivor. (Sections 534.302 and 557.15).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of up to 15 percent; no state estate tax. (Sections 450.10 and 451.2).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$25,000.00 in personal property. Simplified probate allowed for estates up to \$50,000.00 if left to spouse or child, up to \$15,000.00 if left to parent or grandchild, and up to

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\$10,000.00 if left to other relatives. (Sections 633.356 and 635.1).

**Living Will Form:** Iowa Declaration serves as Living Will (Section 144A.3).

**Other Directives:** Anatomical Gift Act (Section 142C ).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 144A.5).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness cannot be your health care provider or an employee of your health care provider. (Section 144A.3).

**Advance Health Care Directive:** Referred to as Iowa Declaration. (Section 144A.3)

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 144B.2).

**Durable Power of Attorney:** No state-specific form. Generic form is in book and on CD.(Section 633B.1+).

**Trustee Residency Requirements:** None. (Section 633.64).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 599.1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 557.10).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 633.169).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 633.275).

**Additional Trust Requirements:** None.

## Kansas

**State Website:** <http://www.kslegislature.org/>

**State Law Reference:** Kansas Statutes Annotated.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 58-1202 & 58-1203). Uniform Testamentary Additions to Trusts Act: (Sections 59-3101). Uniform Gifts to Minors Act: (Sections 38-1701+).

**Court with Probate Jurisdiction:** District Court.

**Minimum Age for Disposing of Property by Will:** 18, unless the testator is married, then the minimum age is 16. (Section 38-101 and 59-601).

**Required Number of Witnesses for Signing of Will:** Two. (Section 59-606).

**Can Witnesses Be Beneficiaries?:** Yes, but a gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. If entitled to take under intestacy statutes, then witness takes lesser of intestate share or gift under the will. (Section 59-604).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 59-606).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Section 59-610).

**How Does Marriage Affect the Will?:** Revokes the will if a child is later born to or adopted into the marriage. (Section 59-610).

**Who Must Be Mentioned in the Will?:** Surviving spouse. (Section 59-610).

**Spouse's Right to Property Regardless of Will:** The amount to which a surviving spouse is entitled to is dependent on the length of marriage. Please refer directly to the statute as the provisions are detailed. (Section 59-6a202).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.



*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters per stirpes. (Sections 59-504 to 59-508).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy is stated. Tenancy-by-the-entirety not recognized. Joint bank account deposits are payable to any survivor. Allows beneficiary deeds and transfer-on death vehicle titles to transfer property on death. (Section 17-2213 and Section 58-501).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax until 2009. (Section 79-102 and Sections 79-15,201+).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$20,000.00 in personal property. Simplified probate allowed for any estate if court and heirs agree. (Sections 59-1507b and 59-3202+).

**Living Will Form:** Kansas Declaration serves as Living Will (Section 65-28,103).

**Other Directives:** Anatomical Gift Act (Section 65-3209+).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 65-28,103).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. Witnesses cannot be entitled to any part of your estate, be financially responsible for your medical care, be related to you by blood or marriage, or be the person who signed the Declaration on your behalf. (Section 65-28,103).

**Advance Health Care Directive:** Referred to as Kansas Declaration. (Section (65-28,103).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 58-629).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 58-650+).

**Trustee Residency Requirements:** None, but if out-of-state trustee is appointed, a resident agent must also be appointed. (Section 59-1706).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 38-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 33-106).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 59-1101).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 59-3101).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust.

# Kentucky

**State Website:** <http://lrc.ky.gov/>

**State Law Reference:** Kentucky Revised Statutes.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 386.800+). Uniform Testamentary Additions to Trusts Act: (Section 394.076). Uniform Gifts to Minors Act: (Sections 385.012+).

**Court with Probate Jurisdiction:** District Court. (Section 24A.120).

**Minimum Age for Disposing of Property by Will:** 18. (Section 394.020).

**Required Number of Witnesses for Signing of Will:** Two. (Section 394.040).

**Can Witnesses Be Beneficiaries?:** Yes, but interested witness may not take more than intestate share, if any. (Sec-



## Appendix: State Estate Planning Laws

tion 394.210).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 394.225).

**Are Holographic Wills Permitted?:** Yes. (Section 394.040).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 394.092).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 394.090).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Section 394.382).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the real estate acquired during the marriage and 1/2 of the deceased spouse's real estate and personal property. (Section 392.020).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Real estate: life estate of 1/3 of fee simple property acquired during marriage and 1/2 of other real estate to spouse; balance to children or grandchildren per stirpes. Personal property: 1/2 to spouse and 1/2 to children equally or to grandchildren per stirpes. Spouse or surviving children if no surviving spouse are entitled to up to \$15,000.00 in personal property exempt from other distribution.

*Spouse and children not of spouse surviving:* Real estate: life estate of 1/3 of fee simple property acquired during marriage and 1/2 of other real estate to spouse; balance to children or grandchildren per stirpes. Personal property: 1/2 to spouse and 1/2 to children equally or to grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* 1/2 to parents' children; or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* 1/2 to spouse and 1/2 to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters or their children per stirpes; or if none, 1/2 to maternal next-of-kin and 1/2 to paternal next-of-kin and their children per stirpes. (Sections 391.010 and 392.020).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed between husband and wife unless joint tenancy stated. Tenancy-by-the-entirety is recognized only for real estate. Joint bank account deposits are payable to any survivor. (Sections 381.130 and Section 391.315).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 140.070 and 140.130).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates where assets are less than debts or in other specialized circumstances. Please refer directly to statute. (Sections 391.030 and 395.455).

**Living Will Form:** Living Will Directive (Section 311.625).

**Other Directives:** Anatomical Gift Act (Sections 311.165 through 311.235).

**Living Will Effective:** When you become unable to make your own medical decisions. (Section 311.625).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. Witnesses cannot be entitled to any part of your estate, financially responsible for your medical care, or related to you by blood or marriage. (Section 311.625).

**Advance Health Care Directive:** Referred to as Living Will Directive. (Section 311.625).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 311.625).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 386.093).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 2.015).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 371.010).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 386.720).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 394.076).

**Additional Trust Requirements:** None.

# Louisiana

**State Website:** <http://www.legis.state.la.us/>

**State Law Reference:** Louisiana Revised Statutes and Louisiana Civil Code Annotated.

**Uniform Acts Adopted:** Uniform Gifts to Minors Act: (Revised Statutes, Sections 9:751+).

**Court with Probate Jurisdiction:** District Court.

**Minimum Age for Disposing of Property by Will:** 16. (Civil Code, Section 1476).

**Required Number of Witnesses for Signing of Will:** Two Witnesses and One Notary. (Civil Code, Section 1577).

**Can Witnesses Be Beneficiaries?:** No. (Civil Code, Section 1582 and 1582.1).

**Are There Provisions for Self-Proving Wills?:** Yes. (**Note: Will forms in this book are not valid in Louisiana.**)

**Are Holographic Wills Permitted?:** Yes. (Civil Code, Section 1575).

**How Does Divorce Affect the Will?:** Revokes the will. (Civil Code, Section 1608).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Civil Code, Section 1691).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. However, children may be disinherited for a just cause. (Civil Code, Section 1619-1624).

**Spouse's Right to Property Regardless of Will:** The Louisiana Civil Code provisions regarding this matter are detailed and should be consulted directly. (Civil Code, Sections 890+).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* All community property to descendants per stirpes. However, the spouse has the right to use the property until remarried. All separate property to children equally or to grandchildren per stirpes.

*Spouse and children not of spouse surviving:* All community property to descendants per stirpes. However, the spouse has the right to use the property until remarried. All separate property to children equally or to grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All community property to spouse. All separate property to brothers and sisters or to their children per stirpes; or if none, to parent(s); or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* All community property to spouse. All separate property to brothers and sisters or their children per stirpes; or if none, to parent(s); or if none, all to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* To brothers and sisters equally or their children per stirpes; or if none, to next-of-kin. (Civil Code, Sections 880 to 991).

**Property Ownership.** Community property state. Joint ownership is presumed if 2 or more persons are listed as owners. No tenancy-by-the-entirety or tenancy-in-common. Joint bank account deposits are payable to any survivor. (Revised Statutes, Title 6, Section 1255 and Civil Code, Sections 2334 and 2335).

**State Gift, Inheritance, or Estate Taxes:** Imposes a state gift tax; imposes a minimal inheritance tax; imposes a state estate tax. (Revised Statutes, Title 47, Sections 2403 and 2432).

**Simplified Probate Procedures:** No affidavit or simplified probate procedures allowed.

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**Living Will Form:** Louisiana Declaration serves as Living Will (Revised Statutes, Section 40:1299.58.3).

**Other Directives:** Anatomical Gift Act (Revised Statutes, Section 17:2354).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Revised Statutes, Section 40:1299.58.2).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Witnesses cannot be entitled to any part of your estate or related by blood or marriage. (Revised Statutes, Sections 40:1299.58.2 and 40:1299.58.3).

**Advance Health Care Directive:** Referred to as Louisiana Declaration. (Revised Statutes, Section 40:1299.58.3).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. (Revised Statutes, Section 40:1299.53).

**Durable Financial Power of Attorney:** No state specific form. Generic form is in book and on CD. (Civil Code, Section 3026).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Civil Code, Section 29).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Civil Code, Section 2440).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Revised Statutes, Section 9:2157).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will and with the same formalities as required for a will in Louisiana. (Revised Statutes, Sections 9:1733 & 9:1751).

**Additional Trust Requirements:** None.

## Maine

**State Website:** <http://janus.state.me.us/legis/statutes/>

**State Law Reference:** Maine Revised Statutes Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 18A-1-101+). Uniform Testamentary Additions to Trusts Act: (Section 18A-2-511). Uniform Gifts to Minors Act: (Sections 33-1651+). Uniform Trustees' Powers Act: (Sections 18A-7-401+).

**Court with Probate Jurisdiction:** Probate Court. (Section 4-201-406).

**Minimum Age for Disposing of Property by Will:** 18. (Section 18A-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 18A-2-502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 18A-2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 18A-2-504).

**Are Holographic Wills Permitted?:** Yes. (Section 18A-2-503).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse unless expressly provided otherwise. (Section 18A-2-508).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 18A-2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren of deceased child; surviving spouse. (Sections 18A-2-301 and 18A-2-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the entire estate of the deceased spouse. (Section 18A-2-201).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$50,000.00 and

1/2 of balance to spouse and 1/2 of balance to children or grandchildren per capita at each generation. (Note: Surviving registered domestic partners are entitled to the same intestate share as a surviving spouse.)

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per capita at each generation.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per capita at each generation.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to children of parents per capita; or if none, then 1/2 to paternal grandparents or their children per capita and 1/2 to maternal grandparents or their children per capita. (Sections 2-102 and 2-103).

**Property Ownership:** Common-law state. Ownership by 2 or more is presumed to be a tenancy-in-common unless joint tenancy is stated. Tenancy-by-the-entirety not recognized. Joint bank account deposits are payable to any survivor. (Sections 33-7-159 and 33-7-160).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax. (Section 18A-3-916).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$20,000.00. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 18A-3-1201 and 18A-3-1203).

**Living Will Form:** Instructions for Health Care serves as Living Will (Section 18A-5-804).

**Other Directives:** Anatomical Gift Act (Section 22-2-2901+).

**Living Will Effective:** The Living Will becomes effective in the event that you have an incurable and irreversible condition that will result in death within a relatively short time, become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected benefits. (Section 18A-5-804).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. No other restrictions apply. (Section 18A-5-804).

**Advance Health Care Directive:** Referred to as Instructions for Health care. (Section 18A-5-801).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 18A-5-506).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 18A-5-508).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Maine. (Section 18A-7-105).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 1-1-72).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 33-851).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or ordered by court. (Section 18B).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 18A-2-511).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust. Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

# Maryland

**State Website:** <http://mlis.state.md.us/>

**State Law Reference:** Maryland Code.

**Uniform Acts Adopted:** Uniform Gifts to Minors Act: (Estates and Trusts, Sections 13-301+). Uniform Trustees' Powers Act: (Estates and Trusts, Sections 15-101 & 15-102).

**Court with Probate Jurisdiction:** Orphan's Court (Circuit Court in Hartford and Montgomery Counties).

**Minimum Age for Disposing of Property by Will:** 18. (Estates and Trusts 4-101).

**Required Number of Witnesses for Signing of Will:** Two. (Estates and Trusts 4-102).

**Can Witnesses Be Beneficiaries?:** Yes. (Estates and Trusts 4-102).

**Are There Provisions for Self-Proving Wills?:** Yes. (Estates and Trusts 5-303).

**Are Holographic Wills Permitted?:** Yes, if made outside U.S. by a member of the Armed Forces. Expires 1 year after testator's discharge from service if he or she is alive and has testamentary capacity. (Estates and Trusts 4-103).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Estates and Trusts 4-105).

**How Does Marriage Affect the Will?:** Revokes the will if a child is later born to or adopted into the marriage and survives the maker of the will. (Estates and Trusts 4-105).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren of deceased child; surviving spouse. (Estates and Trusts 4-105).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/3 if there are children. However, please refer directly to the statute for details. (Estates and Trusts 3-102).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* If any surviving children are minors, 1/2 to spouse and 1/2 to children equally or grandchildren per stirpes; if no surviving children are minors, \$15,000.00 and 1/2 of balance to spouse and 1/2 of balance to children equally or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* If any surviving children are minors, 1/2 to spouse and 1/2 to children equally or grandchildren per stirpes; if no surviving children are minors, \$15,000.00 and 1/2 of balance to spouse and 1/2 of balance to children equally or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$15,000.00 to spouse and then 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* 1/2 to paternal grandparents and 1/2 to maternal grandparents and their next-of-kin. (Title 3, Sections 3-102 to 3-104).

**Property Ownership:** Common-law state. Tenancy-in-common is recognized. Joint tenancy must be stated. Joint ownership by spouses is presumed to be a tenancy-by-the-entirety unless stated otherwise. Joint bank accounts are payable to any survivor. (Financial Institutions 1-204 and Real Property 2-117 and 4-108).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of 10 percent; imposes state estate tax based on federal estate tax. (Tax General 7-204 and 7-304).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$30,000.00 (\$50,000.00 if spouse is sole beneficiary). (Estates and Trusts 5-601)

**Living Will Form:** Advance Medical Directive Health Care Instructions serve as Living Will (Health General, Section

5-603).

**Other Directives:** Anatomical Gift Act (Estates & Trusts, Section 4-501).

**Living Will Effective:** Two (2) physicians must agree in writing that you are incapable of making an informed health care decision, but you are not unconscious or unable to communicate by any other means. (Health General, Section 5-606).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. The person you assign as your agent cannot be a witness. At least one (1) of your witnesses must be a person who is not entitled to any portion of your estate or financial benefit by reason of your death. (Health General, Section 5-603).

**Advance Health Care Directive:** Referred to as Maryland Advance Directive: Planning for future Health Care Decisions. (Health General, Section 5-603).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Health General, Section 5-603).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Estates and Trusts, Section 13-601).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Commercial Law, Section 1-103).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Real Property, Section 5-105).

**Trustee Bond Requirements:** None.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Estates and Trusts, Sections 4-411 & 4-412).

**Additional Trust Requirements:** None.

# Massachusetts

**State Website:** <http://www.mass.gov/legis/laws/mgl/>

**State Law Reference:** Massachusetts General Laws.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Chapter 203, Section 3B). Uniform Gifts to Minors Act: (Chapter 201A, Sections 1+). Uniform Trustees' Powers Act: (Chapter 184B, Section 2).

**Court with Probate Jurisdiction:** Probate and Family Court. (Chapter 215, Section 1+).

**Minimum Age for Disposing of Property by Will:** 18. (Chapter 191, Section 1).

**Required Number of Witnesses for Signing of Will:** Two. (Chapter 191, Section 1).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. (Chapter 191, Section 2).

**Are There Provisions for Self-Proving Wills?:** Yes. (Chapter 192, Section 2).

**Are Holographic Wills Permitted?:** No.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Chapter 191, Section 9).

**How Does Marriage Affect the Will?:** Revokes the will. (Chapter 191, Section 9).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Chapter 191, Sections 15 and 20).



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**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to \$25,000.00 and 1/2 of the deceased spouse's remaining estate if there are no children, and only 1/3 if there are children. However, please refer directly to the statute as the provisions are detailed. (Chapter 191, Section 15).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children equally or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children equally or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* \$200,000.00 and 1/2 of balance to spouse and 1/2 of balance to brothers and sisters equally or their children per stirpes; or if none, to next-of-kin; or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* \$200,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents equally or the surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally or their children per stirpes; or if none, to the next-of-kin. (Chapter 190, Section 1).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. Joint ownership by husband and wife creates a tenancy-in-common, unless otherwise stated. (Chapter 184, Section 7).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes limited state estate tax. (Chapter 65C, Section 1).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$15,000.00 in personal property if beneficiaries are immediate family. (Chapter 195, Sections 16 and 16A).

**Living Will Form:** No state statute governing the use of Living Wills. However, you have a constitutional right to state your wishes about medical care. A form is provided in this book.

**Living Will Effective:** In the event that you develop an irreversible condition that prevents you from making your own medical decisions.

**Living Will Witness Requirements:** Because Massachusetts does not have a statute governing the use of Living Wills, there are no specific requirements to make your Living Will legally binding. We suggest that you sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness should not be your health care provider or an employee of your health care provider. Witnesses should not be entitled to any part of your estate, financially responsible for your medical care, or related to you by blood or marriage.

**Advance Health Care Directive:** No state statute. Form provided on CD.

**Health Care power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. (Chapter 201D, Sections 1-17).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.

**Trustee Residency Requirements:** If out-of-state trustee is appointed and trust holds Massachusetts land, trust must be registered. (Chapter 203, Section 10).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Chapter 231, Section 85P).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Chapter 203, Section 1).

**Trustee Bond Requirements:** None, unless required by trust. (Chapter 205, Section 5).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Chapter 203, Section 3B).

**Additional Trust Requirements:** None.



# Michigan

**State Website:** <http://www.michiganlegislature.org/>

**State Law Reference:** Michigan Compiled Laws Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 701-713).

**Court with Probate Jurisdiction:** Probate Court. (Section 700.1302).

**Minimum Age for Disposing of Property by Will:** 18. (Section 700.1106(c)).

**Required Number of Witnesses for Signing of Will:** Two. (Section 700.2502).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void beyond the amount that the witness-beneficiary would have received as an intestate share unless there were also 2 other disinterested witnesses. (Section 700.2505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 700.2504).

**Are Holographic Wills Permitted?:** Yes. (Section 700.2502).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 700.2801).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 700.2301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 700.2301 and 700.2302).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/4 if there are children. However, please refer directly to the statute as the provisions are detailed. (Sections 700.2201 to 700.2206).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$150,000.00 and 1/2 of balance to spouse and 1/2 of balance to children per stirpes. (Note: All amounts are adjusted for cost-of-living increases each year (Section 100.1210).

*Spouse and children not of spouse surviving:* First \$100,000.00 to spouse and then 1/2 to spouse and 1/2 to children per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$150,000.00 and 3/4 of balance to spouse and 1/4 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally or to their children per stirpes; or if none, 1/2 to maternal grandparents or their children per stirpes and 1/2 to paternal grandparents or their children per stirpes. (Sections 700.2101 to 700.2114).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-the-entirety are recognized. Joint tenancy created only if stated. Joint tenancy by spouses and joint ownership of real estate by spouses is presumed to be a tenancy-by-the-entirety unless otherwise stated. Joint tenancy with right of survivorship must be in writing. Joint bank account deposits are payable to any survivor. (Sections 554.44, 554.45, and 557.101).

**State Gift, Inheritance, or Estate Taxes:** No gift tax or inheritance tax; imposes state estate tax based on federal estate tax. (Section 205.202(a)).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$15,000.00 in personal property. Simplified probate

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allowed for estates up to \$15,000.00 and for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 700.3982, 700.3983, and 700.3987).

**Living Will Form:** No state statute governing the use of Living Wills. However, you have a constitutional right to state your wishes about medical care. A form is provided in this book.

**Living Will Effective:** In the event that you develop an irreversible condition that prevents you from making your own medical decisions.

**Living Will Witness Requirements:** Because Michigan does not have a statute governing the use of Living Wills, there are no specific requirements to make your Living Will legally binding. We suggest that you sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness should not be your health care provider or an employee of your health care provider. Witnesses should not be entitled to any part of your estate, be financially responsible for your medical care, or be related to you by blood or marriage.

**Advance Health Care Directive:** No state statute. Form provided on CD.

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. (Sections 700.5506+).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Sections 700.5501+).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Michigan. (Section 700.7105).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 722.522).

**Trust-Writing Requirements:** Yes. (Section 566.106).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or required by court. (Section 700.7304).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 555.461–555.464).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust. Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

(Section 700.7101).

## Minnesota

**State Website:** <http://www.revisor.leg.state.mn.us/stats/>

**State Law Reference:** Minnesota Statutes Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 524.1-101+). Uniform Trustees' Powers Act: (Section 501B.81). Uniform Testamentary Additions to Trusts Act: (Section 501B.08). Uniform Gifts to Minors Act: (Sections 527.21+).

**Court with Probate Jurisdiction:** District Court. (Section 524.1-201).

**Minimum Age for Disposing of Property by Will:** 18. (Section 524.2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 524.2-502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 524.2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 524.2-504).

**Are Holographic Wills Permitted?:** No.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 524.2-804).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 524.2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Sections 524.2-202 and 524.2-302).

**Spouse's Right to Property Regardless of Will:** The elective share amount is dependent on length of marriage. (Sections 524.2-201 and 524.2-202).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* \$150,000.00 and 1/2 of balance of estate to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally or their children per stirpes; or if none, to the next-of-kin. (Sections 524.2-102 and 524.2-103).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy in writing. Tenancy-by-the-entirety not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Sections 500.19 and 524.6-203).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Section 291.03).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$20,000.00 in personal property. Simplified probate allowed if court determines value of estate is less than value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 524.3-1201 and 524.3-1203).

**Living Will Form:** Health Care Living Will (Section 145B-04).

**Other Directives:** Anatomical Gift Act (Sections 525.9211+).

**Living Will Effective:** Living Will becomes effective in the event that you can no longer make your own medical decisions. (Sections 145B.02 and 145B.04).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness cannot be the person whom you appointed as your agent. At least one (1) witness cannot be your health care provider or an employee of your health care provider. (Section 145B.03).

**Advance Health Care Directive:** Referred to as Health Care Living Will. (Section 145B.04).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 145B.04).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 523.07).

**Trustee Residency Requirements:** No, unless in trust. (Section 524.3-913).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 645.451).

**Trust-Writing Requirements:** Yes. (Section 513.03).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 524.2-511).

**Additional Trust Requirements:** None.

# Mississippi

**State Website:** <http://www.mscode.com/>

**State Law Reference:** Mississippi Code Annotated.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 91-9-101+). Uniform Testamentary Additions to Trusts

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Act: (Section 91-5-11). Uniform Gifts to Minors Act: (Sections 91-20-1+).

**Court with Probate Jurisdiction:** Chancery Court. (Section 9-5-83).

**Minimum Age for Disposing of Property by Will:** 18. (Section 91-5-1).

**Required Number of Witnesses for Signing of Will:** Two. (Section 91-5-1).

**Can Witnesses Be Beneficiaries?:** No, however a witness-beneficiary is still entitled to receive a share of the estate not to exceed the amount he or she is entitled to as an intestate share. (Section 91-5-9).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 91-7-7).

**Are Holographic Wills Permitted?:** Yes. (Section 91-5-1).

**How Does Divorce Affect the Will?:** Does not revoke the will. (Section 91-5-27).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 91-5-27).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Section 91-5-27).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/3 if there are children. However, please refer directly to the statute as the provisions are detailed. (Sections 91-5-25 and 91-5-27).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Spouse and any surviving children or grandchildren each take equal shares.

*Spouse and children not of spouse surviving:* Spouse and any surviving children or grandchildren each take equal shares.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents, brothers, and sisters equally, or to children of brothers and sisters per stirpes. If no brothers or sisters or children of brothers or sisters, all to parents equally or the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or to their children per stirpes; or if none, to grandparents, uncles, and aunts equally, or to their children per stirpes; or if none, to the next-of-kin. (Sections 91-1-3, 91-1-7, and 91-1-11).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-the-entirety are recognized. Ownership by 2 or more persons is presumed to be tenancy-in-common unless joint tenancy is stated. Joint bank account deposits are payable to any survivor. (Section 89-1-7).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes limited state estate tax. Section 27-9-5).

**Simplified Probate Procedures:** Affidavit allowed for estates consisting only of bank account up to \$12,500.00. No simplified probate procedure. (Section 81-14-383).

**Living Will Form:** Instructions for Health Care serves as Living Will (Section 41-41-209).

**Other Directives:** Anatomical Gift Act (Sections 41-39-31+).

**Living Will Effective:** In the event that you have an incurable and irreversible condition that will result in death within a relatively short time, become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected benefits. (Section 41-41-209).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness cannot be the person whom you appointed as your agent, health care provider, or an employee of your health care provider. At least one (1) witness cannot be related to you by blood or marriage or entitled to your estate upon your death. (Section 41-41-209).

**Advance Health Care Directive:** (Section 41-41-209).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 41-41-209).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Sections 87-3-105).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Mississippi.

**Minimum Age for Grantor or Trustee:** Twenty-one (21). (Section 1-3-27).

**Trust-Writing Requirements:** Yes. (Section 91-9-1).

**Trustee Bond Requirements:** None, unless required by trust.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 91-5-11).

**Additional Trust Requirements:** None.

## Missouri

**State Website:** <http://www.moga.state.mo.us/STATUTES/STATUTES.HTM#T>

**State Law Reference:** Missouri Annotated Statutes.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Section 456.7-801+). Uniform Gifts to Minors Act: (Sections 404.005+).

**Court with Probate Jurisdiction:** Circuit Court. (Section 478.260).

**Minimum Age for Disposing of Property by Will:** 18. (Section 474.310).

**Required Number of Witnesses for Signing of Will:** Two. (Section 474.320).

**Can Witnesses Be Beneficiaries?:** Yes, but interested witness is limited to intestate share, if any, unless signed by 2 other disinterested witnesses. (Section 474.330).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 474.337).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 474.420).

**How Does Marriage Affect the Will?:** Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 474.420).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 474.160 and 474.240).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/3 if there are children. However, please refer directly to the statute as the provisions are detailed. (Section 474.160).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* \$20,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents, brothers, and sisters equally, or to their children per stirpes; or if none, all to parents or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally or to their children per stirpes; or if none, to grandparents, uncles, and aunts and their children per stirpes; or if none, to the nearest lineal ancestor and their

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children. (Section 474.010).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-the-entirety are recognized. Ownership by 2 or more persons is presumed to be a tenancy-in-common unless joint tenancy is stated. Joint bank account deposits are payable to any survivor. Allows beneficiary deeds and transfer-on-death vehicle titles to transfer property on death. (Sections 442.025, 442.030, and 442.035).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Section 145.011).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$40,000.00. (Section 473.097).

**Living Will Form:** Missouri Declaration serves as Living Will (Section 459.015).

**Other Directives:** Anatomical Gift Act (Sections 194.210+).

**Living Will Effective:** The Declaration becomes effective in the event that you have an incurable or irreversible medical condition which, without the use of life support, will result in death in a relative short period of time, or you are in a permanent coma or persistent vegetative state. (Section 459.025)

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. If you have someone sign the Declaration on your behalf, that person cannot serve as a witness. (Section 459.015).

**Advance Health Care Directive:** Referred to as Missouri Declaration. (Section 459.015).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 404.822).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 404.705).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Missouri.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 431.055).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 432.010).

**Trustee Bond Requirements:** Yes, unless not required by trust, or court. (Section 456.7-702).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 456.021).

**Additional Trust Requirements:** Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

## Montana

**State Website:** [http://data.opi.state.mt.us/bills/mca\\_toc/index.htm](http://data.opi.state.mt.us/bills/mca_toc/index.htm)

**State Law Reference:** Montana Code Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 72-1-101+). Uniform Trustees' Powers Act: (Sections 72-34-301+). Uniform Testamentary Additions to Trusts Act: (Sections 72-2-531+). Uniform Gifts to Minors Act: (Sections 72-26-501+).

**Court with Probate Jurisdiction:** District Court. (Section 3-5-302).

**Minimum Age for Disposing of Property by Will:** 18. (Section 72-2-521).

**Required Number of Witnesses for Signing of Will:** Two. (Section 72-2-522).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 72-2-525).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 72-2-524).

**Are Holographic Wills Permitted?:** Yes. (Section 72-2-522).



**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Sections 72-2-528 and 72-2-814).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse will still be entitled to his or her statutory share under the state intestate laws. (Section 72-2-331).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 72-2-221 and 72-2-332).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to an elective share of the deceased spouse's "augmented" estate that ranges from a "supplemental amount" for spouses married for less than 1 year, 3 percent of the "augmented" estate for spouses married from 1-2 years, and up to 50 percent for spouses married over 15 years. Please consult the statute directly for complete details. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy arrangement. (Section 72-2-221).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* If 1 child surviving, 1/2 to spouse and 1/2 to child; if more than 1 child surviving, 1/3 to spouse and 2/3 to children equally.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally or their children per stirpes; or if none, 1/2 to paternal grandparents or their children and 1/2 to maternal grandparents or their children per stirpes. (Sections 72-2-112 and 72-2-113).

**Property Ownership:** Common-law state. Tenancy-in-common and joint tenancy (called interests in common and joint interests) are recognized. No tenancy-by-the-entirety is recognized. Tenancy-in-common is presumed unless joint tenancy stated. Joint bank account deposits are payable to any survivor. (Section 40-2-105 and Section 70-1-310).

**State Gift, Inheritance, or Estate Taxes:** No gift tax or inheritance tax. no state estate tax. (Section 72-16-904).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00 in personal property. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 72-3-1101 and 72-3-1103)

**Living Will Form:** Montana Declaration serves as Living Will (Section 50-9-103).

**Other Directives:** Anatomical Gift Act (Section 72-17-101+).

**Living Will Effective:** Becomes effective when you have an incurable or irreversible medical condition which, without the use of life support, will result in death in a relatively short period of time, or you are in a permanent coma or persistent vegetative state. (Section 50-9-105).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. No other restrictions apply. Do not use your appointed health care agent as one of your witnesses. (Section 50-9-103).

**Advance Health Care Directive:** Referred to as Montana Declaration. (Section 50-9-103).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 50-9-103).

**Durable Power of Attorney:** State specific form on CD.(Section 72-5-501).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Montana.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 41-1-101).

**Trust-Writing Requirements:** Yes. (Section 72-33-208).

**Trustee Bond Requirements:** None, unless required by trust or court. (Section 72-33-603).

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**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 72-2-531).

**Additional Trust Requirements:** None.

# Nebraska

**State Website:** <http://www.unicam.state.ne.us/web/public/home>

**State Law Reference:** Revised Statutes of Nebraska.

**Uniform Acts Adopted:** Uniform Probate Code: (Section 30-2201). Uniform Testamentary Additions to Trusts Act: (Sections 30-3602). Uniform Trustees' Powers Act: (Sections 30-3880). Uniform Gifts to Minors Act: (Sections 43-2701+).

**Court with Probate Jurisdiction:** County Court. (Section 24-517).

**Minimum Age for Disposing of Property by Will:** 18, but no minimum age for married persons. (Section 30-2326).

**Required Number of Witnesses for Signing of Will:** Two. (Section 30-2327).

**Can Witnesses Be Beneficiaries?:** Yes, however interested witness may be limited to receiving intestate share. (Section 30-2330).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 30-2329).

**Are Holographic Wills Permitted?:** Yes. (Section 30-2328).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 30-2333).

**How Does Marriage Affect the Will?:** Spouse will still be entitled to his or her statutory share under the state intestate laws. (Section 30-2320).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 30-2313 and 30-2321).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/2 of the "augmented" estate of the deceased spouse. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy arrangement. (Section 30-2313).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to paternal grandparents or their children and 1/2 to maternal grandparents or their children per stirpes. (Sections 30-2302 and 30-2303).

**State Property Ownership:** Common-law state. Tenancy-in-common and joint tenancy are recognized. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Section 76-118).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of up to 16 percent; no state estate tax. (Sections 77-2001 to 77-2006 and 77-2101.01)

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$25,000.00. Simplified probate allowed for estates

up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 30-24,125 and 30-24,127)

**Living Will Form:** Nebraska Declaration serves as Living Will (Section 20-404).

**Other Directives:** Anatomical Gift Act (Section 71-4804).

**Living Will Effective:** Declaration becomes effective when your attending physician determines you to have an incurable or irreversible medical condition which, without the use of life support, will result in death in a relatively short period of time, or you are in a permanent coma or persistent vegetative state. (Section 20-405).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Witnesses cannot be employees of your life or health insurance provider and at least one (1) witness must not be an administrator or employee of your treating health care provider. (Section 20-404).

**Advance Health Care Directive:** Referred to as Nebraska Declaration. (Section 20-404).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 30-3408).

**Durable Power of Attorney:** State specific form on CD.(Section 49-1522).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Nebraska. (Section 30-3820).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 43-2101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 36-103).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiary, or court order. (Section 30-3858).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 30-3602).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust. Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

## Nevada

**State Website:** <http://www.leg.state.nv.us/NRS/>

**State Law Reference:** Nevada Revised Statutes Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 136.220+). Uniform Trustees' Powers Act: (Sections 163.260+). Uniform Gifts to Minors Act: (Sections 167.010+).

**Court with Probate Jurisdiction:** District Court. (Section 136.010).

**Minimum Age for Disposing of Property by Will:** 18. (Section 133.020).

**Required Number of Witnesses for Signing of Will:** Two. Electronic wills are also valid in Nevada. (Section 133.040 and 133.085).

**Can Witnesses Be Beneficiaries?:** No, unless there are 2 other competent witnesses. (Section 133.060).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 133.050).

**Are Holographic Wills Permitted?:** Yes. (Section 133.090).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse, if will was signed prior to entry of divorce decree. (Section 133.115).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 133.110).

**Who Must Be Mentioned in the Will?:** Statute contains detailed provisions regarding this. Please refer directly to statute

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or consult an attorney if this is a critical factor. (Sections 133.160 and 134.005).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Section 123.250).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's community property to spouse. If only 1 child is surviving, 1/2 of decedent's separate property to spouse and 1/2 to child or grandchildren per stirpes; if more than 1 child is surviving, 1/3 of separate property to spouse and 2/3 to the children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* All of decedent's community property to spouse. If only 1 child is surviving, 1/2 of decedent's separate property to spouse and 1/2 to child or grandchildren per stirpes; if more than 1 child is surviving, 1/3 of separate property to spouse and 2/3 to the children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All of decedent's community property to spouse. 1/2 of decedent's separate property to spouse and 1/2 to brothers and sisters equally or their children per stirpes; or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* All of decedent's community property to spouse. 1/2 of decedent's separate property to spouse and 1/2 to parents equally or surviving parent.

*Children, but no spouse surviving:* All to children or their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to the next-of-kin. There are additional distribution possibilities listed in the statute. (Sections 134.040 to 134.160).

**Property Ownership:** Community property state. Tenancy-in-common, joint tenancy, and community property with right of survivorship are recognized. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. Allows beneficiary deeds to transfer property on death. (Sections 111.060 and 111.065).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; Imposes a state estate tax based on federal estate tax. (Section 375A.100).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$20,000 in personal property if left to family members and no real estate is owned in Nevada. Simplified probate allowed for estates up to \$100,000.00 with court approval. (Sections 146.020, 146.070, and 146.080).

**Living Will Form:** Nevada Declaration serves as Living Will (Section 449-610).

**Other Directives:** Anatomical Gift Act (Sections 451.500+).

**Living Will Effective:** Declaration becomes effective when your doctor determines that your death would occur without the use of life-sustaining medical care. (Section 449.617).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. No other restrictions apply. (Section 449.610).

**Advance Health Care Directive:** Referred to as Nevada Declaration. (Section 449.610).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 449.830).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 111.460).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 129.010).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 111.235).

**Trustee Bond Requirements:** None, unless required by trust or ordered by court. (Section 153.120).

**Trustee Pour-Over to Will:** Trust must be identified in the will. Terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 163.220–163.250).

**Additional Trust Requirements:** None.

# New Hampshire

**State Website:** <http://gencourt.state.nh.us/rsa/html/indexes/default.asp>

**State Law Reference:** New Hampshire Revised Statutes.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 564-A:1+). Uniform Testamentary Additions to Trusts Act: (Sections 563-A:1+). Uniform Gifts to Minors Act: (Sections 463-A:1+).

**Court with Probate Jurisdiction:** Probate Court. (Section 547:3).

**Minimum Age for Disposing of Property by Will:** 18, but no minimum for married persons. (Section 551:1).

**Required Number of Witnesses for Signing of Will:** Two. (Section 551:2).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. (Section 551:3).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 551:2a).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the former spouse. (Section 551:13).

**How Does Marriage Affect the Will?:** Spouse may elect to receive statutory share. (Section 560:10).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren; surviving spouse. (Sections 551:10 and 560:10).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/3 if there are children. However, please refer directly to the statute as the provisions are detailed. (Section 560:10).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* \$250,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. (\$150,000.00 and 1/2 of the balance if surviving spouse also has children which are not decedents)

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$250,000.00 and 3/4 of balance to spouse and 1/4 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes. (Section 561:1).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless joint tenancy stated. Ownership by spouses creates joint tenancy. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Sections 477:18 and 477:19).

**State Gift, Inheritance, or Estate Taxes:** No gift tax or inheritance tax. no state estate tax. (Section 87:01 ).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates left to a spouse or an only child. (Section 553:32)

**Living Will Form:** New Hampshire Declaration serves as Living Will (Section 137-J:20).

**Other Directives:** Anatomical Gift Act (Section 291-A).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 137-J:20).

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**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness cannot be a person who has a claim against your estate, stands to inherit from your estate, be your spouse, or be your doctor or a person acting under direction or control of your doctor. If you are a resident of a health care facility or a patient in a hospital, one of your witnesses may be your doctor or an employee of your doctor. (Section 137-J:14).

**Advance Health Care Directive:** Referred to as New Hampshire Declaration. (Section 137-J:19).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 137-J:19).

**Durable Power of Attorney:** State specific form on CD. (Section 506:6).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, a resident agent must also be appointed.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 21-B:1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 477:17).

**Trustee Bond Requirements:** None, unless required by trust or ordered by court. (Section 564-B:7-702).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 563-A:1 and 563-A:4).

**Additional Trust Requirements:** None.

## New Jersey

**State Website:** <http://www.njleg.state.nj.us>

**State Law Reference:** New Jersey Revised Statutes.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 3B:3-1+). Uniform Testamentary Additions to Trusts Act: (Sections 3B:4-1+). Uniform Trustees' Powers Act: (Section 3B:14-23). Uniform Gifts to Minors Act: (Sections 46:38A-1+).

**Court with Probate Jurisdiction:** Surrogate's Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 3B:3-1).

**Required Number of Witnesses for Signing of Will:** Two. (Section 3B:3-2).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 3B:3-8).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 3B:3-4).

**Are Holographic Wills Permitted?:** Yes. (Section 3B:3-3).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 3B:3-14).

**How Does Marriage Affect the Will?:** Spouse shall still be entitled to his or her statutory share under the state intestate laws. (Section 3B:5-15).

**Who Must Be Mentioned in the Will?:** Children born or adopted; grandchildren; surviving spouse. (Sections 3B:5-15 and 3B:5-16).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the "augmented" estate of the deceased spouse. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy. (Section 3B:8-1).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/4 of estate (at least \$50,000.00 but no more than 200,000.00) and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes.



*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* 1/4 of estate (at least \$50,000.00 but no more than 200,000.00) and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes. (Sections 3B:5-3 and 3B:5-4).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-the-entirety are recognized. Ownership by spouses is presumed to be a tenancy-by-the-entirety unless stated otherwise. Tenancy-in-common is presumed unless joint tenancy stated. Joint bank account deposits are payable to any survivor. (Sections 46:3-17, 46:3-17.1, and 46:3-17.2).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of up to 16 percent; imposes state estate tax. (Sections 54-34+ and 54:38-1)

**Simplified Probate Procedures:** Affidavit allowed for intestate estates up to \$20,000.00 to spouse or \$5,000.00 to other persons. No simplified probate allowed. (Sections 3B:10-3 and 3B:10-4).

**Living Will Form:** New Jersey Instruction Directive serves as Living Will (Section 26-2H-55).

**Other Directives:** Anatomical Gift Act (Section 26:6-57+).

**Living Will Effective:** Your doctor or treating health care institution must receive this document. Your attending physician and one (1) other physician must confirm that you are unable to make health care decisions. (Sections 26:2H-59 and 26:2H-60).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness cannot be the person whom you appointed as your agent. (Section 26:2H-56).

**Advance Health Care Directive:** Referred to as Advance Directive for Health Care. (Section 26:2H-58).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 26:2H-56).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 46:2B-8.1).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 9:17B-4).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 25:1-11).

**Trustee Bond Requirements:** Yes, if the trustee is not the appointed trustee, the trust requires it, or court orders it. (Section 3B:15-1).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 3B:4-1+).

**Additional Trust Requirements:** None.

## New Mexico

**State Website:** <http://www.legis.state.nm.us/>

**State Law Reference:** New Mexico Statutes Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 45-1-101+). Uniform Trustees' Powers Act: (Section 46A-

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8-801+). Uniform Testamentary Additions to Trusts Act: (Sections 45-2-511+) Uniform Gifts to Minors Act: (Sections 46-7-11+).

**Court with Probate Jurisdiction:** Probate or District Court. (Section 34-7-1+).

**Minimum Age for Disposing of Property by Will:** 18. (Section 45-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 45-2-502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 45-2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 45-2-504).

**Are Holographic Wills Permitted?:** No.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 45-2-802).

**How Does Marriage Affect the Will?:** Spouse will still be entitled to his or her statutory share under the state intestate laws. (Section 45-2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 45-2-301 and 45-2-302).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Section 45-2-805).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's community property to spouse. 1/4 of decedent's separate property to spouse and 3/4 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* All of decedent's community property to spouse. 1/4 of decedent's separate property to spouse and 3/4 to children or grandchildren per stirpes. *Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes. (Sections 45-2-102 and 45-2-103).

**Property Ownership:** Community property state. Tenancy-in-common, joint tenancy, and community property are recognized. Spouses may hold real estate as joint tenants. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. Allows beneficiary deeds to transfer property on death. (Section 47-1-15).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 7-7-3 and 7-7-4).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$30,000.00 and estates of couples with community property principal residence of up to \$100,000.00. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 45-3-1201, 45-3-1203, and 45-3-1205).

**Living Will Form:** Optional Advance Health Care Directive (Section 24-7A-4).

**Other Directives:** Anatomical Gift Act (Sections 24-6B-1+).

**Living Will Effective:** This document becomes effective in the event that you have an incurable and irreversible condition that will result in death within a relatively short time, become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected

benefits. (Section 24-7A-4).

**Living Will Witness Requirements:** The law does not require that your advance directive be witnessed. To avoid future concerns, we recommend that you sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. A witness should not be the person whom you appointed as your agent. (Section 24-7A-4)

**Advance Health Care Directive:** (Section 24-7A-4).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive.

**Durable Power of Attorney:** State specific form on CD.(Section 46B-1-104).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 28-6-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing, requested by beneficiaries, or court order.

**Trustee Bond Requirements:** None, unless required by trust.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 45-2-511+).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust.

## New York

**State Website:** <http://assembly.state.ny.us/leg/>

**State Law Reference:** New York Consolidated Laws.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Estates, Powers and Trusts, Section 3-3.7). Uniform Trustees' Powers Act: (Estates, Powers and Trusts, Section 11-1.1). Uniform Gifts to Minors Act: (Estates, Powers and Trusts, Sections 7-6.1+).

**Court with Probate Jurisdiction:** Probate Court. (Surrogate's Court Procedure, Section 1409).

**Minimum Age for Disposing of Property by Will:** 18. (Estates, Powers and Trusts, Section 3-1.1).

**Required Number of Witnesses for Signing of Will:** Two. (Estates, Powers and Trusts, Section 3-2.1).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. (Estates, Powers and Trusts, Section 3-3.2).

**Are There Provisions for Self-Proving Wills?:** Yes. (Surrogate's Court Procedure, Section 1406).

**Are Holographic Wills Permitted?:** Yes, but restricted to members of the armed forces. (Estates, Powers and Trusts, Section 3-2.2).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Estates, Powers and Trusts, Section 5-1.4).

**How Does Marriage Affect the Will?:** Does not revoke the will. Surviving spouse has right to take elective share of estate. (Estates, Powers and Trusts, Section 5-1.3).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Estates, Powers and Trusts, Sections 5-1.1-A and 5-3.2).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to \$50,000.00 or 1/3 of the deceased spouse's estate. However, please refer directly to the statute as the provisions are detailed. (Estates, Powers and Trusts, Section 5-1.1-A).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes.

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*Spouse and children not of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to grandparents equally or their children per capita; or if none, to the next-of-kin. (Estates, Powers and Trusts, Section 4-1.1).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-the-entirety are recognized, however, tenancy-by-the-entirety in personal property is not recognized. Joint ownership by spouses is presumed to be a tenancy-by-the-entirety unless specified otherwise. Tenancy-in-common is presumed unless joint tenancy is stated. Joint bank account deposits are payable to any survivor. (Real Property, Section 240b).

**State Gift, Inheritance, or Estate Taxes:** Imposes a gift tax; no inheritance tax; imposes a state estate tax of up to 21 percent. (Tax, Article 26, Sections 951+).

**Simplified Probate Procedures:** Affidavit may be used by executor under simplified probate procedures. Simplified probate allowed for estates up to \$20,000.00 in personal property, excluding spousal and minor children's exempt property up to \$56,000.00. (Surrogate's Court Procedure Section 1301).

**Living Will Form:** Order not to resuscitate acts as Living Will. (Public Health, Section 2960+).

**Other Directives:** Anatomical Gift Act (Public Health, Section 4300+).

**Living Will Effective:** The Living Will becomes effective when you become terminally ill, permanently unconscious, or minimally conscious due to brain damage and will never regain the ability to make decisions. (Public Health, Section 2965).

**Living Will Witness Requirements:** Order not to resuscitate acts as Living Will in New York. You must sign in the presence of two (2) adult witnesses who do not benefit from your estate. (Public Health, Section 2964).

**Advance Health Care Directive:** Referred to as Order Not To Resuscitate. (Public Health, Sections 2960+).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Public Health, Sections 2980+).

**Durable Power of Attorney:** State specific form on CD.(General Obligations, Sections 5-1501+).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Estates, Powers and Trusts, Section 2.-1.10).

**Trust-Writing Requirements:** Yes. (Estates, Powers and Trusts, Section 13-2.1).

**Trustee Bond Requirements:** None, unless required by trust.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Estates, Powers and Trusts, Section 3-3.7).

**Additional Trust Requirements:** Residents of New York will need to prepare a "Notice of Assignment Property to Living Trust." Please see proper form that is included on the Forms-on-CD.

## North Carolina

**State Website:** <http://www.ncga.state.nc.us/>

**State Law Reference:** North Carolina General Statutes.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 31-47). Uniform Trustees' Powers Act: (Sections 32-25+). Uniform Gifts to Minors Act: (Sections 33A-1+).

**Court with Probate Jurisdiction:** Superior Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 31-1).

**Required Number of Witnesses for Signing of Will:** Two. (Section 31-3.3).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void unless there were also 2 other disinterested witnesses. (Section 31-10).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 31-11.6).

**Are Holographic Wills Permitted?:** Yes. (Section 31-3.4).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 31-5.4).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 31-5.3).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Section 29-30 and Section 31-5.5).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse has 2 choices if there is a will: (1) the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are 1 or no children of the spouses surviving, and only 1/3 of the estate if there are 2 or more children or grandchildren surviving; or (2) the surviving spouse may choose a life estate of 1/3 of all real estate that the decedent owned on his or her death. Please consult the statute directly as the terms are complex. (Section 29-30 and Section 30-3.1).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* If only 1 child surviving, \$30,000.00 (from personal property, if any) and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. If more than 1 child surviving, \$30,000.00 (from personal property, if any) and 1/3 of balance to spouse and 2/3 of balance to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* If only 1 child surviving, \$30,000.00 (from personal property, if any) and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. If more than 1 child surviving, \$30,000.00 (from personal property, if any) and 1/3 of balance to spouse and 2/3 of balance to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$50,000.00 (from personal property, if any) and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes. (Sections 29-14 and 29-15).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. However, a tenancy-by-the-entirety in personal property not recognized. Joint bank account deposits are payable to any survivor. (Sections 39-7+).

**State Gift, Inheritance, or Estate Taxes:** Imposes a gift tax; does not impose an inheritance tax; imposes a state estate tax based on federal estate tax. (Section 105-32.2).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$10,000.00 in personal property (\$20,000.00 if intestate and spouse is sole beneficiary). No other simplified probate allowed. (Sections 28A-25-1).

**Living Will Form:** Declaration of a Desire for a Natural Death serves as Living Will (Section 90-321).

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**Other Directives:** Anatomical Gift Act (Section 130A-402+).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 90-321).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses and a notary public. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, be directly financially responsible for your health care, or be an owner, operator, or employee of a health care institution in which you are a patient. Witnesses also cannot be related by blood or marriage. (Section 90-321).

**Advance Health Care Directive:** Referred to as Declaration of a Desire for a Natural Death. (Section 90-321).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Sections 32A-15+)

**Durable Power of Attorney:** State specific form on CD.(Section 32A-1+).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, a resident agent must also be appointed.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 48A-2).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 22-2).

**Trustee Bond Requirements:** Yes, if the trustee is not the appointed trustee. Otherwise, not unless required by trust or ordered by court.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 31-47).

**Additional Trust Requirements:** None.

## North Dakota

**State Website:** <http://www.legis.nd.gov/information/statutes/cent-code.html>

**State Law Reference:** North Dakota Century Code.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 30.1-01-01+). Uniform Testamentary Additions to Trusts Act: (Sections 30.1-08-11+). Uniform Trustees' Powers Act: (Sections 59-16-01+). Uniform Gifts to Minors Act: (Sections 47-24.1-01+).

**Court with Probate Jurisdiction:** District Court. (Section 30.1-02-02).

**Minimum Age for Disposing of Property by Will:** 18. (Section 30.1-08-01).

**Required Number of Witnesses for Signing of Will:** Two. (Section 30.1-08-02).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 30.1-08-05).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 30.1-08-04).

**Are Holographic Wills Permitted?:** No.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 30.1-10-02).

**How Does Marriage Affect the Will?:** Spouse will still be entitled to his or her statutory share under the state intestate laws. (Section 30.1-06-01).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 30.1-06-01 and 30.1-06-02).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the "augmented" estate of the deceased spouse. In general, the "augmented" estate includes both the property that passes under the will and any other property that passes by other "non-will" transfers, such as under the terms of a living trust or a joint tenancy arrangement. (Section 30.1-05-01).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.



*Spouse and children not of spouse surviving:* \$150,000.00 and 1/2 of balance to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$200,000.00 and 3/4 of balance to spouse and 1/4 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal next-of-kin and 1/2 to paternal next-of-kin. (Sections 30.1-04-02 and 30.1-04-03).

**Property Ownership:** Common-law state. Tenancy-in-common and joint tenancy are recognized. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Section 47-02-06).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. ( Sections 57-37.1-02 and 57-37.1-02).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00 in personal property. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 30.1-23-01+, and 30.1-23-03)

**Living Will Form:** Declaration serves as Living Will (Section 23-06.5-17).

**Other Directives:** Anatomical Gift Act (Sections 23-06.6-01+).

**Living Will Effective:** Two (2) physicians must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care (Section 23-06.5-17).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses and a notary public. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, be directly financially responsible for your health care, or be your doctor. Witnesses also cannot be related by blood or marriage. If you are presently living in a nursing home or other long-term care facility, one (1) of your witnesses must be one (1) of the following: a member of the clergy, a lawyer licensed to practice in North Dakota, or a person designated by the Department of Human Services or the county court for the county in which the facility is located. (Section 23-06.5-17).

**Advance Health Care Directive:** (Section 23-06.5-17).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 23-06.5-17).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 30.1-30).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Sections 9-02-01 & 9-02-02).

**Trust-Writing Requirements:** Repealed in 2007. No new requirements enacted by January, 2008.

**Trustee Bond Requirements:** Repealed in 2007. No new requirements enacted by January, 2008.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 30.1-08-11).

**Additional Trust Requirements:** Residents should register a "Registration of Living Trust" form with the local court in their county of residence. This requirement is mandatory, although there are no penalties or consequences for failure to register.

# Ohio

**State Website:** <http://codes.ohio.gov/>

## Appendix: State Estate Planning Laws

**State Law Reference:** Ohio Revised Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 2107.63). Uniform Trustees' Powers Act: (Sections 2109.39+). Uniform Gifts to Minors Act: (Sections 5814.01).

**Court with Probate Jurisdiction:** Court of Common Pleas.

**Minimum Age for Disposing of Property by Will:** 18. (Section 2107.02).

**Required Number of Witnesses for Signing of Will:** Two. (Section 2107.03).

**Can Witnesses Be Beneficiaries?:** Yes, but any gift to a beneficiary who was a witness will be void (beyond what that beneficiary would get as an intestate share) unless there were also 2 other disinterested witnesses. (Section 2107.15).

**Are There Provisions for Self-Proving Wills?:** No.

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 2107.33).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 2107.37).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 2106.01 and 2107.34).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are one or fewer children, and only 1/3 if there are two or more children. However, please refer directly to the statute as the provisions are detailed. (Section 2106.01).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* If only 1 child surviving, \$20,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes. If more than 1 child surviving, \$20,000.00 and 1/3 of balance to spouse and 2/3 of balance to children or grandchildren per stirpes. *Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes; or if none, to the next-of-kin. (Section 2105.06).

**Property Ownership:** Common-law state. Tenancy-in-common and joint tenancies are recognized., Tenancy-by-the-entirety recognized if created prior to April 4, 1985. Joint tenancy must be stated in specific language "for their joint lives, remainder to the survivor of them." Joint bank account deposits are payable to any survivor. Allows beneficiary deeds and transfer-on-death vehicle titles to transfer property on death. (Sections 5302.19 and 5302.20).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes a state estate tax. (Section 5731.02).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$35,000.00 (\$100,000.00 if spouse is sole beneficiary). (Section 2113.03)

**Living Will Form:** Living Will Declaration (Section 2133-04).

**Other Directives:** Anatomical Gift Act (Section 2108.01+).

**Living Will Effective:** Two (2) physicians determine that you are in a terminal condition and your death will result without using life-sustaining procedures, including the determination that there is no reasonable possibility that you will regain the ability to make your own health care decisions. (Section 2133.03).

**Living Will Witness Requirements:** Sign in front of two (2) witnesses eighteen (18) years or older or a notary public. Witnesses cannot be related to you by blood, marriage, or adoption, or be your doctor or the administrator of a nursing home in which you are receiving treatment. (Section 2133.02).

**Advance Health Care Directive:** (Section 2133.02 is not a statutory form, but it provides suggestions for phrasing the directive.)

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Sections 1337.11+).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 1337.09).

**Trustee Residency Requirements:** None. (Section 2109.21).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 3109.01).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 1335.04).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 2109.05).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 2107.63).

**Additional Trust Requirements:** Upon the grantor's death, the Successor Trustee must record an affidavit regarding any real estate held by the trust. The affidavit must contain all names and address of trustees and all legal descriptions of property.

## Oklahoma

**State Website:** <http://www.lsb.state.ok.us/>

**State Law Reference:** Oklahoma Statutes Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 84-301+). Uniform Trustees' Powers Act: (Section 60-171). Uniform Gifts to Minors Act: (Sections 58-1201+).

**Court with Probate Jurisdiction:** District Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 84-41).

**Required Number of Witnesses for Signing of Will:** Two. (Section 84-55).

**Can Witnesses Be Beneficiaries?:** Yes, if witnessed by 2 other witnesses. However, any gift under the will to a witness-beneficiary is void if it exceeds the amount that he or she would receive as an intestate share of the estate. (Sections 84-143 and 84-144).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 84-55).

**Are Holographic Wills Permitted?:** Yes. (Section 84-54).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 84-114).

**How Does Marriage Affect the Will?:** Revokes the will if a child is later born into the marriage. (Section 84-131).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Section 84-131).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children, and only 1/3 if there are children. However, please refer to the statute for details. (Section 84-44).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* If 1 child, then 1/2 to spouse and 1/2 to child or grandchildren. If deceased had more than 1 child, then 1/3 to spouse and 2/3 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* All of property acquired during the marriage by joint effort to spouse, and balance to children and spouse in equal shares.

*Spouse, but no children or parent(s) surviving:* 1/2 of other property to spouse and 1/3 to maternal grandparents or their children and 1/3 to paternal grandparents or their children per stirpes; or if none, to the next-of-kin.

*Spouse and parent(s), but no children surviving:* 1/2 of property to spouse and 1/2 to parents or surviving parent per stirpes.

## Appendix: State Estate Planning Laws

*Children, but no spouse surviving:* All to children equally or grandchildren per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes; or if none, to the next-of-kin. (Section 84-213).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. Rights of survivorship must be stated. Joint bank account deposits are payable to any survivor. (Section 60-74).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes a state estate tax. (Section 68-803).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$150,000.00. (Section 58-241).

**Living Will Form:** Living Will is Part 1 of Advance Directive for Health Care (Section 63-3101.4).

**Other Directives:** Anatomical Gift Act (Sections 63-2201+).

**Living Will Effective:** This Directive goes into effect once it is given to your doctor and you are unable to make your own medical decisions. In order to follow your instructions regarding life-sustaining treatment, your doctor must first consult another doctor to determine that you are persistently unconscious or suffering from a terminal condition. (Section 63-3101.3)

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be any person who would inherit from you under any existing will or by operation of law. (Section 63-3101.4).

**Advance Health Care Directive:** (Section 63-3101.4).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 63-3101.4).

**Durable Power of Attorney:** State specific form on CD.(Sections 15-1001+).

**Trustee Residency Requirements:** If out-of-state trustee is appointed a resident agent must also be appointed.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 15-13).

**Trust-Writing Requirements:** Yes. (Section 60-136).

**Trustee Bond Requirements:** Yes, unless not required by trust.

**Trustee Pour-Over to Will:** Trust must be identified in the will. Terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 84-301+).

**Additional Trust Requirements:** None.

## Oregon

**State Website:** <http://www.leg.state.or.us/ors/>

**State Law Reference:** Oregon Revised Statutes.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 128.001+). Uniform Testamentary Additions to Trusts Act: (Section 112.265). Uniform Gifts to Minors Act: (Sections 126.805+).

**Court with Probate Jurisdiction:** Circuit or County Court.

**Minimum Age for Disposing of Property by Will:** 18, however, no minimum age for married persons. (Section 112.225).

**Required Number of Witnesses for Signing of Will:** Two. (Section 112.235).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 112.245).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 113.055).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 112.315).

**How Does Marriage Affect the Will?:** Revokes the will if the maker of the will is survived by a spouse. (Section 112.305).

**Who Must Be Mentioned in the Will?:** Statute contains detailed provisions regarding this matter. Please refer directly to statute text or consult an attorney if this is a critical factor. (Sections 112.405 and 114.105).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to up to 1/4 of the deceased spouse's estate, including any property that was received under the deceased's will. Please refer directly to the statute for further details. (Section 114.105).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to the next-of-kin. (Sections 112.025 to 112.045).

**Property Ownership:** Common-law state. Tenancy-in-common and tenancy-by-the-entirety (for real estate only) are recognized. Transfers of real estate to a husband and wife automatically creates a tenancy-by-the-entirety. Right of survivorship must be stated without using the words "joint tenancy." Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Section 93.180).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes state estate (inheritance) tax; no state estate tax. (Section 118.010).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate for estates with personal property up to \$50,000.00 and real estate up to \$90,000.00 (Sections 114.505+).

**Living Will Form:** Health Care Instructions serves as Living Will (Section 127.531).

**Other Directives:** Anatomical Gift Act (Sections 97.950 through 97.964).

**Living Will Effective:** Two (2) physicians agree that you have an incurable and irreversible condition that will result in death within a relatively short time, will become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or the likely risks and burdens of treatment would outweigh the expected benefits.

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. If you have someone sign the Declaration on your behalf, that person cannot serve as a witness. Your attending physician cannot be a witness. At least one (1) of your witnesses cannot be related to you by blood, marriage, or adoption, entitled to any portion of your estate, or be an owner, operator, or employee of your treating health care facility. (Section 127.515).

**Advance Health Care Directive:** (Section 127.531).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 127.531).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 127.005).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 109.510).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 93.020).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other

than the will and signed before or at the same time as the will. (Section 112.265).

**Additional Trust Requirements:** None.

# Pennsylvania

**State Website:** <http://members.aol.com/StatutesPA/Index.html>

**State Law Reference:** Pennsylvania Code.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 20-2515+). Uniform Trustees' Powers Act: (Sections 20-7131+). Uniform Gifts to Minors Act: (Sections 20-5301+).

**Court with Probate Jurisdiction:** Court of Common Pleas. (Section 20-102).

**Minimum Age for Disposing of Property by Will:** 18. (Section 20-2501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 20-3132).

**Can Witnesses Be Beneficiaries?:** Yes. (Under Pennsylvania case law).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 20-3132.1).

**Are Holographic Wills Permitted?:** Yes. (Under Pennsylvania case law).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Section 20-2507).

**How Does Marriage Affect the Will?:** Surviving spouse receives intestate share if marriage took place after will was signed, unless will gives greater share or will was expressly made in contemplation of marriage. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Section 20-2507).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 20-2203 and 20-2507).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's estate. (Section 20-2203).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* \$30,000.00 and 1/2 of balance to spouse and 1/2 of balance to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* \$30,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children equally or their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents and 1/2 to paternal grandparents; or if none, all to aunts, uncles, or their children per stirpes. (Sections 20-2102 and 20-2103).

**Property Ownership:** Common-law state. Tenancy-in-common and tenancy-by-the-entirety are recognized. Joint tenancy with right of survivorship only if stated. Real estate jointly-owned by spouses is presumed to be a tenancy-by-the-entirety unless stated otherwise. Joint bank account deposits are payable to any survivor. (Section 68-110).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; imposes an inheritance tax of up to 15 percent; imposes state estate tax based on federal estate tax. (Sections 72-2101+).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate for estates up to \$25,000.00 in personal property. (Sections 20-3102).

**Living Will Form:** Declaration serves as Living Will. (Section 20-5404).



**Other Directives:** Anatomical Gift Act (Section 20-8613).

**Living Will Effective:** The Declaration becomes effective when your physician receives a copy of it and determines that you are incompetent and in a terminal condition or a state of permanent unconsciousness. (Section 20-5405).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. If you have someone sign the Declaration on your behalf, that person cannot serve as a witness. (Section 20-5404).

**Advance Health Care Directive:** Referred to as Declaration. (Section 20-5404).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 20-5404).

**Durable Power of Attorney:** State specific form on CD.(Section 20-5601).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 23-5101).

**Trust-Writing Requirements:** Yes. (Section 33-2).

**Trustee Bond Requirements:** None, unless required by trust or ordered by court. (Section 20-7111).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 20-2515).

**Additional Trust Requirements:** None.

## Rhode Island

**State Website:** <http://www.rilin.state.ri.us/Statutes/Statutes.html>

**State Law Reference:** Rhode Island General Laws.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Sections 18-4-1+). Uniform Gifts to Minors Act: (Sections 18-7-1+).

**Court with Probate Jurisdiction:** Probate Court. (Section 8-9-2.1+).

**Minimum Age for Disposing of Property by Will:** 18. (Section 33-5-2).

**Required Number of Witnesses for Signing of Will:** Two. (Section 33-5-5).

**Can Witnesses Be Beneficiaries?:** No. (Section 33-6-1).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 33-7-26).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the former spouse. (Section 33-5-9.1).

**How Does Marriage Affect the Will?:** Revokes the will completely. (Section 33-5-9).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Sections 33-6-23 and 33-25-2).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to all of the deceased spouse's real estate for the rest of his or her life. (Section 33-25-2).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Real estate: life estate to spouse and balance to children equally or grandchildren per stirpes. Personal property: 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* Real estate: life estate to spouse and balance to children equally or grandchildren per stirpes. Personal property: 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* Real estate: life estate and \$75,000.00 to spouse (if court approves), balance to brothers and sisters equally; or if none, 1/2 to maternal grandparents and 1/2 to paternal grandparents; or if none, to aunts and uncles equally or their children per stirpes; or if none, to the next-of-kin; or if none, to the spouse.

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Personal property: \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to brothers and sisters equally; or if none, 1/2 to maternal grandparents and 1/2 to paternal grandparents; or if none, to aunts and uncles equally or their children per stirpes; or if none, to the next-of-kin; or if none, to the spouse.

*Spouse and parent(s), but no children surviving:* Real estate: life estate and \$75,000.00 to spouse (if court approves), balance to parents or surviving parent. Personal property: \$50,000.00 and 1/2 of balance to spouse and 1/2 of balance to parents or surviving parent.

*Children, but no spouse surviving:* All to children or grandchildren per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents and 1/2 to paternal grandparents; or if none, to the next-of-kin. (Sections 33-1-5, 33-1-6, and 33-1-10).

**Property Ownership:** Common-law state. Tenancy-in-common is presumed unless stated otherwise. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. Joint bank account deposits are payable to any survivor. (Sections 34-3-1+).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax. (Section 44-22-1.1).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate for estates up to \$15,000.00 in personal property as long as no real estate is part of estate. (Section 33-24-1)

**Living Will Form:** Declaration serves as Living Will (Section 23-4.11-3).

**Other Directives:** Anatomical Gift Act (Section 23-18.6+).

**Living Will Effective:** Your doctor must determine that your death would occur without use of life-sustaining medical care. (Section 23-4.11-3).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. Witnesses cannot be related to you by blood, marriage, or adoption. (Section 23-4.11-3).

**Advance Health Care Directive:** Referred to as Declaration. (Section 23-4.11-3).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Sections 23-4.10+).

**Durable Power of Attorney:** State specific form on CD.(Sections 18-16-1+).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 15-12-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 9-1-4).

**Trustee Bond Requirements:** None, unless trust requires court order. (Section 18-13-14).

**Trustee Pour-Over to Will:** Trust must be identified in the will. Terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 18-14-1+).

**Additional Trust Requirements:** None.

## South Carolina

**State Website:** <http://www.scstatehouse.net/>

**State Law Reference:** Code of Laws of South Carolina Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 62-1-100+). Uniform Trustees' Powers Act: (Sections 62-7-701+). Uniform Testamentary Additions to Trusts Act: (Sections 62-2-510+). Uniform Gifts to Minors Act: (Sections 20-7-140+).

**Court with Probate Jurisdiction:** Probate Court. (Section 62-1-302).

**Minimum Age for Disposing of Property by Will:** 18, or if married. (Section 62-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 62-2-502).

**Can Witnesses Be Beneficiaries?:** Yes, if there were also 2 additional competent witnesses, otherwise witness share not to exceed intestate share. (Section 62-2-504).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 62-2-503).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 62-2-507).

**How Does Marriage Affect the Will?:** Does not revoke the will and spouse may still receive intestate share. (Section 62-2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 62-2-201 and 62-2-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's estate. (Section 62-2-201).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent if no brothers and sisters.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to lineal ancestors equally or to survivor; or if none, to aunts and uncles equally, or their children per stirpes; or if none, to the next-of-kin. (Sections 62-2-102 and 62-2-103).

**Property Ownership:** Common-law state. Tenancy-in-common and joint tenancy are recognized. Right of survivorship only if stated with specific language "joint tenants with right of survivorship, and not as tenants-in-common." Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Section 27-7-40).

**State Gift, Inheritance, or Estate Taxes:** Imposes a gift tax; no inheritance tax; imposes a state estate tax based on federal estate tax. (Section 12-16-510).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$10,000.00 in personal property if also signed by judge. Simplified probate allowed for estates up to \$10,000.00. (Sections 62-3-1201 and 62-3-1203).

**Living Will Form:** Declaration of a Desire for a Natural Death serves as Living Will (Section 44-77-50).

**Other Directives:** Anatomical Gift Act (Sections 44-43-310+).

**Living Will Effective:** Two (2) physicians must determine you are in a terminal condition and your death will result without using life-sustaining procedures. (Section 44-77-30).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses and a notary public. A witness cannot be a beneficiary of your life insurance policy, your health care provider, or an employee of your health care provider. Witnesses cannot be related to you by blood, marriage, or adoption, entitled to any part of your estate, or directly financially responsible for your health care. In addition, at least one (1) witness must not be an employee of a health facility in which you are a patient. If you are a resident in a hospital or nursing facility, one of the witnesses must also be an ombudsman designated by the State Ombudsman, Office of the Governor. (Section 44-77-40).

## Appendix: State Estate Planning Laws

**Advance Health Care Directive:** Referred to as a Declaration of a Desire for a Natural Death. (Section 44-77-50).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 62-5-504).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 62-5-501).

**Trustee Residency Requirements:** Out-of-state trustees must qualify to do business in South Carolina and if a corporate trustee, must have capital of at least \$250,000.00.

**Minimum Age for Grantor or Trustee.** Eighteen (18). (Sections 20-7-30+).

**Trust-Writing Requirements:** Yes. (Section 62-7-401).

**Trustee Bond Requirements:** None, unless required by trust.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 62-2-510).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust.

## South Dakota

**State Website:** <http://legis.state.sd.us/statutes/>

**State Law Reference:** South Dakota Codified Laws Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 29A-2-511+). Uniform Trustees' Powers Act: (Sections 55-1A-1+). Uniform Gifts to Minors Act: (Sections 55-10A-1+). Uniform Probate Code: (Sections 29A-1-101+).

**Court with Probate Jurisdiction:** Circuit Court. (Section 16-6-9).

**Minimum Age for Disposing of Property by Will:** 18. (Section 29A-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 29A-2-502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 29A-2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 29A-2-504).

**Are Holographic Wills Permitted?:** Yes. (Section 29A-2-502).

**How Does Divorce Affect the Will?:** Revokes the will as to the former spouse. (Section 29A-2-804).

**How Does Marriage Affect the Will?:** Does not revoke the will, but surviving spouse is entitled to intestate share. (Section 29A-2-301).

**Who Must Be Mentioned in the Will?:** Surviving spouse and children born or adopted. (Sections 29A-2-202 and 29A-2-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to an elective share of the deceased spouse's "augmented" estate that ranges from a "supplemental amount" for spouses married for less than 1 year, 3 percent of the "augmented" estate for spouses married from 1-2 years, and up to 50 percent for spouses married over 15 years. Please consult the statute directly for complete details. (Section 29A-2-202).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* \$100,000.00 and 1/2 of balance to spouse, 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to the next-of-kin. (Sections 29A-2-101+).

**Property Ownership:** Common-law state. Tenancy-in-common and joint tenancy are recognized. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Sections 43-2-11 to 43-2-15).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 10-40A-3 and 10-40-21).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00 in personal property. Simplified (informal) probate allowed for all estates. (Sections 29A-301+ and 29A-3-1201+).

**Living Will Form:** Living Will Declaration (Section 34-12D-3).

**Other Directives:** Anatomical Gift Act (Sections 34-26-20 through 34-26-47).

**Living Will Effective:** Declaration is effective when your death will result without using life-sustaining procedures, including the determination that there is no reasonable possibility that you will regain the ability to make your own health care decisions. (Section 34-12D-5).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. Although South Dakota does not have any restrictions on who can be a witness, we suggest that you not use your appointed attorney-in-fact or your health care provider. (Section 34-12D-2).

**Advance Health Care Directive:** Referred to as Living Will Declaration. (Section 34-12D-3).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Sections 34-12C and 59-7-2.1).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 59-7-9).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 26-1-1).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. A trust holding personal or other property may be written or oral. (Section 43-25-1).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 21-22-10).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 29A-2-511).

**Additional Trust Requirements:** None.

# Tennessee

**State Website:** <http://www.michie.com>

**State Law Reference:** Tennessee Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Sections 32-3-106+). Uniform Trustees' Powers Act: (Section 35-50-110). Uniform Gifts to Minors Act: (Sections 35-7-101+).

**Court with Probate Jurisdiction:** Probate Court. (Section 32-2-107).

**Minimum Age for Disposing of Property by Will:** 18. (Section 32-1-102).

**Required Number of Witnesses for Signing of Will:** Two. (Section 32-1-104).

**Can Witnesses Be Beneficiaries?:** No, unless attested by 2 disinterested witnesses. (Section 32-1-103).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 32-2-110).

**Are Holographic Wills Permitted?:** Yes. (Section 32-1-105).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 31-1-102).

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**How Does Marriage Affect the Will?:** Revokes the will if a child is later born to the marriage. (Section 32-1-201).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; surviving spouse. (Sections 31-4-101 and 32-3-103).

**Spouse's Right to Property Regardless of Will:** A spouse's right to property regardless of provisions in the will is dependent on length of marriage. Please consult statute directly for provisions regarding this topic. (Section 31-4-101).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* Family homestead and 1 year's support allowance and 1 child's share of estate (at least 1/3) to spouse, and balance to children equally or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* Family homestead and 1 year's support allowance and 1 child's share of estate (at least 1/3) to spouse, and balance to children equally or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents and 1/2 to paternal grandparents, or surviving grandparent; or if none, to the children of grandparents per stirpes. (Section 31-2-104).

**Property Ownership:** Common-law state. Tenancy-in-common and tenancy-by-the-entirety are recognized. Transfers of real estate to a husband and wife automatically creates a tenancy-by-the-entirety. Joint tenancy with right to survivorship has been abolished with regard to real estate. Joint bank account deposits are payable to any survivor. (Section 45-2-703 and 66-1-107+).

**State Gift, Inheritance, or Estate Taxes:** Imposes a gift tax; imposes an inheritance tax of up to 16 percent; imposes state estate tax based on federal estate tax. (Sections 67-8-102, 67-8-204, and 67-8-314).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$25,000.00. (Sections 30-4-102+).

**Living Will Form:** Living Will (Section 32-11-105).

**Other Directives:** Anatomical Gift Act (Section 68-30-101+).

**Living Will Effective:** The Living Will becomes effective when your death will result without using life-sustaining procedures. (Section 32-11-105).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses and a notary public. A witness cannot be a person who has claim against your estate upon your death, stands to inherit from your estate, be your doctor or an employee of your doctor, or be an owner, operator, or employee of a health care institution in which you are a patient. Witnesses also cannot be related by blood or marriage. (Section 32-11-104 and 32-11-105).

**Advance Health Care Directive:** Referred to as Living Will. (Section 32-11-105).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 34-6-201).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 34-6-101+).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Tennessee. (Section 66-24-123).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 1-3-105).

**Trust-Writing Requirements:** A trust may be oral or written. (Section 29-2-101).

**Trustee Bond Requirements:** None, unless required by trust or required by court or financial institution. (Section 35-



50-111).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 32-3-106).

**Additional Trust Requirements:** Upon the Grantor's death, the Successor Trustee must notify all beneficiaries of the existence of the trust.

# Texas

**State Website:** [www.capitol.state.tx.us](http://www.capitol.state.tx.us)

**State Law Reference:** Texas Statutes and Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Probate Code, Section 58A). Uniform Trustees' Powers Act: (Property, Sections 113.001+). Uniform Gifts to Minors Act: (Property, Sections 141.001+).

**Court with Probate Jurisdiction:** County or Probate Court. (Probate Code, Section 2)

**Minimum Age for Disposing of Property by Will:** 18, however no minimum age for married persons or members of the Armed Forces. (Probate Code, Section 57).

**Required Number of Witnesses for Signing of Will:** Two. (Probate Code, Section 59).

**Can Witnesses Be Beneficiaries?:** Yes, however the witness-beneficiary may not receive a bequest that exceeds the amount that he or she would have received as an intestate share of the estate. (Probate Code, Section 61).

**Are There Provisions for Self-Proving Wills?:** Yes. (Probate Code, Section 59).

**Are Holographic Wills Permitted?:** Yes. (Probate Code, Section 59).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Probate Code, Section 69).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Probate Code, Section 63).

**Who Must Be Mentioned in the Will?:** Children, born or adopted. (Probate Code, Section 67).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Probate Code, Section 270).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* 1/2 of community property, 1/3 life estate in separate real property, and 1/3 separate personal property to spouse; balance to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 of community property, 1/3 life estate in separate real property, and 1/3 separate personal property to spouse; balance to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All community property, all separate personal property, and 1/2 separate real property to spouse; balance to brothers and sisters equally or their children per stirpes; or if none, to grandparents or their descendants; or if none, all to spouse.

*Spouse and parent(s), but no children surviving:* All community property, all separate personal property, and 1/2 separate real property to spouse; balance to parents (if both surviving); if only 1 parent surviving, 1/4 balance to parent and 1/4 to brothers and sisters equally, or their children per stirpes; or if none, entire 1/2 to parent.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* If both parents are surviving, all to parents equally; if only 1 parent surviving, 1/2 to parent and 1/2 to brothers and sisters equally, or their children per stirpes; or if none, all to parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children and 1/2 to paternal grandparents or their children per stirpes. (Probate

## Appendix: State Estate Planning Laws

Code, Section 38).

**Property Ownership:** Community property state. Tenancy-in-common is recognized. Joint tenancy with right of survivorship is created only if the parties sign a separate written agreement. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Family Code, Section 3.001+).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Tax Code, Section 211).

**Simplified Probate Procedures:** Affidavit allowed for intestate estates up to \$50,000.00 in personal property. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses and for estates where "independent administration" is requested by the will or by all who will inherit under the will. (Probate Code, Section 137, 143, and 145).

**Living Will Form:** Directive to Physicians and Family or Surrogate serves as Living Will (Health and Safety Code, Section 166.033).

**Other Directives:** Anatomical Gift Act Texas (Health and Safety Code, Section 692).

**Living Will Effective:** This Directive becomes effective when your attending physician certifies in writing that you are in a terminal or irreversible condition. (Health and Safety Code, Section 166.031).

**Living Will Witness Requirements:** At least one (1) witness cannot be related to you by blood, marriage, or adoption, designated to make treatment decisions for you, entitled to any part of your estate, or be your doctor or an employee of your doctor. A witness cannot be an employee of a health care facility in which you are a patient, an officer, director, partner, or a business office employee of the health care facility or any part of any parent organization of the health care facility, or have a claim against your estate after you die. (Health and Safety Code, Section 166.003).

**Advance Health Care Directive:** Referred to as Directive to Physicians and Family or Surrogate. (Health and Safety Code, Section 166.033).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Health and Safety Code, Section 166.033).

**Durable Power of Attorney:** State specific form on CD.(Probate Code, Sections 481+).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Civil Practice and Remedies, Section 129.001)

**Trust-Writing Requirements:** Yes. (Property, Section 112.004).

**Trustee Bond Requirements:** Yes, if corporate trustee. Otherwise, yes unless not required by trust. (Property, Section 113.058).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Probate Code, Section 58a).

**Additional Trust Requirements:** None.

## Utah

**State Website:** <http://www.le.state.ut.us/>

**State Law Reference:** Utah Code Annotated.

**Uniform Acts Adopted:** Uniform Probate Code: (Sections 75-1-101+). Uniform Trustees' Powers Act: (Sections 75-7-401+). Uniform Testamentary Additions to Trusts Act: (Section 75-2-511). Uniform Gifts to Minors Act: (Sections 75-5a-101+).

**Court with Probate Jurisdiction:** District Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 75-2-501).

**Required Number of Witnesses for Signing of Will:** Two. (Section 75-2-502).

**Can Witnesses Be Beneficiaries?:** Yes. (Section 75-2-505).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 75-2-504).

**Are Holographic Wills Permitted?:** Yes. (Section 75-2-502 and 503).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Section 75-2-804).

**How Does Marriage Affect the Will?:** Does not revoke the will and spouse is entitled to intestate share. (Section 75-2-301).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Sections 75-2-202 and 75-2-302).

**Spouse's Right to Property Regardless of Will:** The surviving spouse is entitled to 1/3 of the deceased spouse's augmented estate. (Section 75-2-202).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* \$50,000.00 and 1/2 of balance to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; 1/2 to maternal grandparents or their descendants and 1/2 to paternal grandparents or their descendants per stirpes; or if none, to the next-of-kin. (Sections 75-2-102 and 75-2-103).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy and tenancy-by-entireties are recognized. Real estate is presumed to be tenancy-in-common, unless owned jointly by husband and wife (after May 5, 1997), then ownership is presumed to be joint tenancy. Joint bank account deposits are payable to any survivor. (Section 57-1-5).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 59-11-103 and 59-11-104).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,000.00 in personal property. Simplified probate allowed for estates up to value of homestead, exempt property allowance, family allowances, last illness and burial expenses. (Sections 75-3-1201 and 75-3-1203).

**Living Will Form:** Advance Health Care Directive serves as Living Will, (Section 75-2a-117).

**Other Directives:** Anatomical Gift Act (Section 26-28-101+).

**Living Will Effective:** Two (2) physicians must physically examine you and certify in writing you are in a terminal condition or persistent vegetative state. (Sections 75-2a-103 and 75-2a-109).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older. A witness cannot be entitled to any part of your estate, be financially responsible for your medical care, be related to you by blood or marriage, be the person who signed the Declaration on your behalf, or be an employee of your health care facility. (Section 75-2a-117).

**Advance Health Care Directive:** (Section 75-2a-117).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 75-2a-117).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 75-5-501).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Utah.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 15-2-1).

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**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 25-5-1).

**Trustee Bond Requirements:** None, unless required by trust, requested by beneficiaries, or ordered by the court. (Section 75-7-702).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 72-2-511).

**Additional Trust Requirements:** None.

### Vermont

**State Website:** <http://www.leg.state.vt.us/statutes/statutes2.htm>

**State Law Reference:** Vermont Statutes Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 14-105-2329). Uniform Gifts to Minors Act: (Sections 14-115-3201+).

**Court with Probate Jurisdiction:** Probate Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 14-1-1).

**Required Number of Witnesses for Signing of Will:** Two (Section 14-1-5).

**Can Witnesses Be Beneficiaries?:** No, unless attested by 3 disinterested witnesses. (Section 14-1-10).

**Are There Provisions for Self-Proving Wills?:** No.

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Does not revoke the will. (Section 14-1-11).

**How Does Marriage Affect the Will?:** Does not revoke the will and spouse is entitled to intestate share of estate. (Section 14-1-11).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Sections 14-45-555 and 556).

**Spouse's Right to Property Regardless of Will:** If there are no children or more than 1 child of the surviving spouse and the deceased, the surviving spouse is entitled to 1/3 of the deceased spouse's real estate. If there is only 1 child of the surviving spouse and the deceased, the surviving spouse is entitled to 1/2 of the deceased spouse's real estate. Please refer to the statute for instances when this effect may be barred. (Section 14-43-461).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* If 1 child surviving: 1/2 of deceased's estate to spouse; balance to child or grandchildren per stirpes. If more than 1 child surviving: 1/3 to spouse and 2/3 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* If 1 child surviving: 1/3 of deceased's estate to spouse; balance to child or grandchildren per stirpes. If more than 1 child surviving: 1/3 to spouse and 2/3 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* If spouse waives the statutory share and any will provisions, then \$25,000.00 and 1/2 of balance to spouse and 1/2 of balance as if surviving spouse had not survived.

*Spouse and parent(s), but no children surviving:* \$25,000.00 and 1/2 of balance to spouse and 1/2 of balance as if surviving spouse had not survived.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to the next-of-kin. (Section 14-45-551).

**Property Ownership:** Common-law state. Tenancy-in-common, tenancy-by-the-entirety, and joint tenancy are recognized. Real estate is presumed to be held by tenancy-in-common unless it is ownership of husband and wife, in which case, joint tenancy is presumed. Joint bank account deposits are payable to any survivor. (Section 27-1-2).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Section 32-190-7442a).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$10,000.00 in personal property. (Section 14-81-1901(3)).

**Living Will Form:** Advance Health Care Directive serves as Living Will (Section 18-231-9700+).

**Other Directives:** Anatomical Gift Act (Section 18-109-5238+).

**Living Will Effective:** Document becomes effective if death would occur regardless of the use of life- sustaining procedures. (Section 18-231-9703).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older. A witness cannot be entitled to any part of your estate, be your spouse, attending physician or any person acting under the direction or control of your attending physician, or any person who has a claim against your estate. (Section 18-231-9703).

**Advance Health Care Directive:** (Section 18-231).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive.

**Durable Power of Attorney:** No state-specific form. Generic form is in book and on CD.(Section 14-123-3508).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, a resident agent must also be appointed.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 1-3-173).

**Trust-Writing Requirements:** A trust holding real estate must be in writing; otherwise may be written or oral. (Section 27-5-303).

**Trustee Bond Requirements:** Yes, unless not required by trust. (Section 14-105-2301).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 14-105-2329).

**Additional Trust Requirements:** None.

# Virginia

**State Website:** <http://leg1.state.va.us/>

**State Law Reference:** Virginia Code Annotated.

**Uniform Acts Adopted:** Uniform Gifts to Minors Act: (Sections 31-37+).

**Court with Probate Jurisdiction:** Circuit Court.

**Minimum Age for Disposing of Property by Will:** 18. (Section 64.1-47).

**Required Number of Witnesses for Signing of Will:** Two. (Section 64.1-49).

**Can Witnesses Be Beneficiaries?:** No. (Section 64.1-51).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 64.1-87.1).

**Are Holographic Wills Permitted?:** Yes. (Section 64.1-49).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Section 64.1-59).

**How Does Marriage Affect the Will?:** Does not revoke the will and the spouse will be entitled to his or her elective share. (Section 64.1-13).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Sections 64.1-16 and 64.1-71).

**Spouse's Right to Property Regardless of Will:** If there are no child(ren) of the deceased, the surviving spouse is entitled to 1/2 of the deceased spouse's augmented estate. If there are any surviving child(ren) of the deceased, the

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surviving spouse is entitled to 1/3 of the deceased spouse's augmented estate. (Section 64.1-16).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* 1/3 to spouse and 2/3 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children, or maternal next-of-kin (or if none, to paternal side) and 1/2 to paternal grandparents or their children, or paternal next-of-kin (or if none, to maternal side). (Section 64.1-1).

**Property Ownership:** Common-law state. Joint tenancy is recognized only if right of survivorship is stated. Tenancy-in-common and tenancy-by-the-entirety are recognized. Joint bank account deposits are payable to any survivor unless clear evidence exists that deposit is payable only to specified survivor. (Sections 55-20+).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; no state estate tax. (Sections 58.1-361 to 58.1-363).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$15,000.00 in personal property and an additional \$15,000.00 in benefits and wages. No simplified probate allowed. (Sections 64.1-123 and 64.1-132.2).

**Living Will Form:** Advance Medical Directive serves as Living Will (Section 54.1-2984).

**Other Directives:** Anatomical Gift Act (Section 32.1-8-290).

**Living Will Effective:** This directive becomes effective in the event that you develop a terminal condition or are in a permanent vegetative state and can no longer make your own medical decisions. (Section 54.1-2984).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older. Witnesses cannot be related by blood or marriage. (Section 54.1-2982 and 54.1-2983).

**Advance Health Care Directive:** Referred to as Advance Medical Directive. (Section 54.1-2984).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 54.1-2984).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Section 54.1-3900+).

**Trustee Residency Requirements:** If out-of-state trustee is appointed, a resident agent must also be appointed unless trustee is a corporation authorized to do business in Virginia or is a parent, sister, or brother of decedent and has qualified to do business in Virginia. (Section 2-9-59).

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 1-13-42).

**Trust-Writing Requirements:** A trust may be written or oral. (Section 11-2).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 64.1-73.1).

**Additional Trust Requirements:** None.

## Washington

**State Website:** <http://www.leg.wa.gov/>

**State Law Reference:** Washington Revised Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 11.12.250). Uniform Trustees' Powers Act: (Section 11.98.070). Uniform Gifts to Minors Act: (Sections 11.114.010+).



**Court with Probate Jurisdiction:** Superior Court. (Section 11.96A.040).

**Minimum Age for Disposing of Property by Will:** 18. (Section 11.12.010).

**Required Number of Witnesses for Signing of Will:** Two. (Section 11.12.020).

**Can Witnesses Be Beneficiaries?:** No, unless will is attested by 2 other disinterested witnesses. (Section 11.12.160).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 11.20.020).

**Are Holographic Wills Permitted?:** No provision.

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 11.12.051).

**How Does Marriage Affect the Will?:** Revokes the will as to the surviving spouse. (Section 11.12.095).

**Who Must Be Mentioned in the Will?:** Statute contains detailed provisions regarding this matter. Please refer directly to statute text or consult an attorney if this is a critical factor. (Section 11.12.091).

**Spouse's Right to Property Regardless of Will:** Community property right to 1/2 of the deceased spouse's "community" property. (Under Washington case law).

**Law of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All of decedent's community property and 1/2 of decedent's separate property to spouse; 1/2 of decedent's separate property to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* All of decedent's community property and 1/2 of decedent's separate property to spouse; 1/2 of decedent's separate property to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All of decedent's community property and 3/4 of decedent's separate property to spouse; 1/4 of decedent's separate property to parents or surviving parent or their children.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to grandparents or their children. (Section 11.04.015).

**Property Ownership:** Community property state. Tenancy-in-common and joint tenancy are recognized. Joint tenancy with right of survivorship is created if specifically stated. No survivorship rights in tenancy-by-the-entirety. Joint bank account deposits are payable to any survivor unless evidence exists that deposit is payable only to specified survivor, and is subject to community property rights. The beneficiary of certain accounts and/or trusts may be altered in a will, under certain circumstances. Please see the text of the statute for details. (Sections 64-28.10+ and 11.11.020).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax. (Sections 83.100+ and 83.110A).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$100,000.00 in personal property. Simplified probate allowed for all estates where assets exceed debts. (Sections 11.62.010+).

**Living Will Form:** Health Care Directive serves as Living Will (Section 70.122.030).

**Other Directives:** Anatomical Gift Act (Section 68.50.520+).

**Living Will Effective:** Declaration applies when two (2) physicians diagnose you to have a incurable or irreversible condition that will cause death in a relatively short time and you can no longer make your own medical decisions. (Section 70.122.020).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older. A witness cannot be entitled to any part of your estate, related by blood or marriage, be your attending physician or any person acting under the direction or control of your attending physician, or be any person who has a claim against your estate.

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(Section 70.122.030).

**Advance Health Care Directive:** (Section 70.122.030).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 11.94.010+).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 11.94.010+).

**Trustee Residency Requirements:** No provision.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 26.28.010).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. A trust holding personal property can be either oral or in writing. (Section 19.36.010).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 11.12.250).

**Additional Trust Requirements:** None.

## West Virginia

**State Website:** <http://www.legis.state.wv.us/>

**State Law Reference:** West Virginia Code Annotated.

**Uniform Acts Adopted:** Uniform Testamentary Additions to Trusts Act: (Section 41-3-8). Uniform Gifts to Minors Act: (Sections 36-7-1+).

**Court with Probate Jurisdiction:** County Court. (Section 41-5-1).

**Minimum Age for Disposing of Property by Will:** 18. (Section 41-1-2).

**Required Number of Witnesses for Signing of Will:** Two. (Section 41-1-3).

**Can Witnesses Be Beneficiaries?:** Yes, but witness may lose bequest beyond intestate share, if any. (Section 41-2-1).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 41-5-15).

**Are Holographic Wills Permitted?:** Yes. (Section 41-1-3).

**How Does Divorce Affect the Will?:** Revokes the will as to former spouse. (Section 41-1-6).

**How Does Marriage Affect the Will?:** Revokes the will as to spouse. (Section 42-3-7).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren; and surviving spouse. (Sections 41-4-1, 41-4-2, and 42-3-1).

**Spouse's Right to Property Regardless of Will:** A surviving spouse's right to property regardless of provisions in a decedent spouse's will are dependent on length of marriage. Please consult the statute directly for provision regarding this topic. (Section 42-3-1).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* 1/2 to spouse, 1/2 to deceased's children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, 1/2 to maternal grandparents or their children, or to maternal uncles, aunts, or their children, or maternal next-of-kin (or

if none, to paternal side) and 1/2 to paternal grandparents or their children, or paternal uncles, aunts, or their children, or paternal next-of-kin (or if none, to maternal side). (Sections 42-1-3 and 42-1-3a).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. Right of survivorship is created if stated. Joint bank account deposits are payable to any survivor. (Section 36-1-19).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Section 11-11-3).

**Simplified Probate Procedures:** No affidavit procedure. Simplified probate allowed for estates up to \$100,000.00. (Section 44-3A-5).

**Living Will Form:** Living Will, (Section 16-30-4).

**Other Directives:** Anatomical Gift Act (Section 16-19-1+).

**Living Will Effective:** Your physician must certify in writing that you are in a terminal condition and your death would occur within a short period of time without the use of life-sustaining medical care. (Section 16-30-4).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses and a notary public. A witness cannot be a person who stands to inherit from your estate, be directly financially responsible for your health care, be your attending physician, or be your health care representative or successor if you have a medical power of attorney. A witness cannot be related by blood or marriage or be the person who signed the document on your behalf. (Section 16-30-4).

**Advance Health Care Directive:** Referred to as Living Will. (Section 16-30-4).

**Health Care Power of Attorney:** State specific form is part of Advance Health Care Directive. (Section 16-30-4).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD.(Sections 39-4-1 through 39-4-7).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 49-5-1).

**Trust-Writing Requirements:** Yes. (Section 36-1-4).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Sections 41-3-8– 41-3-11).

**Additional Trust Requirements:** None.

## Wisconsin

**State Website:** <http://www.legis.state.wi.us/>

**State Law Reference:** Wisconsin Statutes Annotated.

**Uniform Acts Adopted:** Uniform Trustees' Powers Act: (Section 701.09). Uniform Gifts to Minors Act: (Sections 880.61+).

**Court with Probate Jurisdiction:** Circuit Court. (Section 851.04).

**Minimum Age for Disposing of Property by Will:** 18. (Section 853.01).

**Required Number of Witnesses for Signing of Will:** Two. (Section 853.03).

**Can Witnesses Be Beneficiaries?:** Yes, but a witness-beneficiary's share under the will cannot exceed that person's intestate share, if any. (Section 853.07).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 853.04).

**Are Holographic Wills Permitted?:** No provision.

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**Are Living Wills Recognized?:** Yes, under the “Wisconsin Natural Death Act.” (Sections 154.01 to 154.29).

**How Does Divorce Affect the Will?:** Revokes the will as to divorced spouse. (Section 853.11).

**How Does Marriage Affect the Will?:** Revokes the will as to the spouse if he or she is not otherwise provided for. Spouse may still be entitled to his or her statutory share under the state intestate laws. (Sections 853.11 and 853.25).

**Who Must Be Mentioned in the Will?:** Children, born or adopted; grandchildren (if of deceased child); surviving spouse. (Section 861.02).

**Spouse’s Right to Property Regardless of Will:** Modified community property rights to 1/2 of the deceased spouse’s “community” property. (Section 861.02).

**Laws of Intestate Succession (Distribution If No Will):** *Spouse and children of spouse surviving:* All to spouse.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents equally or to the surviving parent.

*No spouse, children, or parent(s) surviving:* All to brothers and sisters equally, or their children per stirpes; or if none, to grandparents or surviving grandparent; or if none, to the next-of-kin. (Section 852.01).

**Property Ownership:** Community property state. The Wisconsin statute, however, uses unique terminology to describe this treatment of property. Tenancy-in-common and joint tenancy are recognized (except between spouses after January 1, 1986). Ownership by spouses (created after January 1, 1986) is presumed to be community property with right of survivorship unless stated otherwise. Tenancy-by-the-entirety is not recognized. Joint bank account deposits are payable to any survivor. (Sections 700.17, 700.19, and 700.20).

**State Gift, Inheritance, or Estate Taxes:** Imposes a gift tax; no inheritance tax; imposes state estate tax. (Section 72.02).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$50,000.00. Simplified probate allowed for estates up to \$50,000.00 and there is a surviving spouse and/or children. (Sections 867.01 and 867.03).

**Living Will Form:** Declaration to Physicians serves as Living Will (Section 154-03).

**Other Directives:** Anatomical Gift Act (Section 157.06).

**Living Will Effective:** This directive becomes effective in the event that your attending physician and one (1) other physician certifies you have developed a terminal condition or are in a permanent vegetative state and can no longer make your own medical decisions. (Section 154.03).

**Living Will Witness Requirements:** Sign in the presence of two (2) adult witnesses. A witness cannot be a person who stands to inherit from your estate, be directly financially responsible for your health care, be your attending physician, or be an employee of your health care provider or an inpatient health care facility in which you are a patient, unless the employee is a chaplain or social worker. A witness also cannot be related by blood or marriage. (Section 154.03).

**Advance Health Care Directive:** Referred to as Declaration to Physicians. (Section 154.03).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 155.05).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 243.07).

**Trustee Residency Requirements:** Out-of-state trustee must qualify to do business in Wisconsin.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 48.02).

**Trust-Writing Requirements:** Yes. (Section 243.01).

**Trustee Bond Requirements:** Yes, unless not required by trust or ordered by court. (Section 701.16).

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 701.09).

**Additional Trust Requirements:** None.

# Wyoming

**State Website:** <http://legisweb.state.wy.us/>

**State Law Reference:** Wyoming Statutes.

**Uniform Acts Adopted:** Uniform Trustees Powers Act: (Sections 4-10-816). Uniform Testamentary Additions to Trusts Act: (Section 2-6-102). Uniform Gifts to Minors Act: (Section 34-13-137).

**Court with Probate Jurisdiction:** District Court. (2-2-101).

**Minimum Age for Disposing of Property by Will:** 18. (Section 2-6-101 and 2-1-301).

**Required Number of Witnesses for Signing of Will:** Two. (Section 2-6-112).

**Can Witnesses Be Beneficiaries?:** No, unless attested by 2 disinterested witnesses. (Section 2-6-112).

**Are There Provisions for Self-Proving Wills?:** Yes. (Section 2-6-114).

**Are Holographic Wills Permitted?:** Yes. (Section 2-6-113).

**Are Living Wills Recognized?:** Yes, under the "Wyoming Living Will Act." (Sections 35-22-201+).

**How Does Divorce Affect the Will?:** Revokes the will as to the divorced spouse. (Section 2-6-118).

**How Does Marriage Affect the Will?:** Does not revoke the will. (Section 2-6-118).

**Who Must Be Mentioned in the Will?:** Statute contains detailed provisions regarding this matter. Please refer directly to statute text or consult an attorney if this is a critical factor. (Section 2-5-101).

**Spouse's Right to Property Regardless of Will:** Generally, the surviving spouse is entitled to 1/2 of the deceased spouse's estate if there are no children or if surviving spouse is parent of deceased's children; and only 1/4 if the surviving spouse is not the parent of any surviving children of the deceased. However, please refer directly to the statute as the provisions are detailed. (Section 2-5-101).

**Laws of Intestate Succession (Distribution if No Will):** *Spouse and children of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse and children not of spouse surviving:* 1/2 to spouse and 1/2 to children or grandchildren per stirpes.

*Spouse, but no children or parent(s) surviving:* All to spouse.

*Spouse and parent(s), but no children surviving:* All to spouse.

*Children, but no spouse surviving:* All to children equally or to their children per stirpes.

*Parent(s), but no spouse or children surviving:* All to parents, brothers, and sisters equally, or to children of brothers and sisters per stirpes. *No spouse, children, or parent(s) surviving:* All to grandparents, uncles, aunts, or their children, per stirpes. (Section 2-4-101).

**Property Ownership:** Common-law state. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are recognized. Right of survivorship created if stated. Joint bank account deposits are payable to any survivor. (Section 34-1-140).

**State Gift, Inheritance, or Estate Taxes:** No gift tax; no inheritance tax; imposes state estate tax based on federal estate tax. (Sections 39-19-101+).

**Simplified Probate Procedures:** Affidavit allowed for estates up to \$150,000.00 in personal property. Simplified probate allowed for estates up to \$150,000.00. (Sections 2-1-201 and 2-1-205).

**Living Will Form:** Living Will Declaration (Section 35-22-403).

**Other Directives:** Anatomical Gift Act (Section 35-5-102).

**Living Will Effective:** This Declaration becomes effective when two (2) physicians agree that you have a terminal

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condition from which there can be no recovery and your death is imminent. (Section 35-22-403).

**Living Will Witness Requirements:** Sign in the presence of two (2) witnesses eighteen (18) years or older or a notary public. Witnesses cannot be entitled to any part of your estate or financially responsible for your medical care. A witness cannot be related to you by blood or marriage or be the person who signed the Declaration on your behalf. (Section 35-22-403).

**Advance Health Care Directive:** (Section 35-22-403).

**Health Care Power of Attorney:** No state specific form. Generic form is included on Advance Health Care Directive. Generic form is included on Advance Health Care Directive. (Section 35-22-406).

**Durable Power of Attorney:** No state specific form. Generic form is in book and on CD. (Section 3-5-101).

**Trustee Residency Requirements:** None.

**Minimum Age for Grantor or Trustee:** Eighteen (18). (Section 14-1-101).

**Trust-Writing Requirements:** A trust holding real estate must be in writing. (Section 1-23-105).

**Trustee Bond Requirements:** No provision.

**Trustee Pour-Over to Will:** The trust must be identified in the will. The terms of the trust must be in a document other than the will and signed before or at the same time as the will. (Section 2-6-103).

**Additional Trust Requirements:** None.



