

## Happy National Make-a-Will Month Help Your Clients Celebrate with a Great Plan

### A Financial Advisor's Guide to Navigating Different Types of Wills

Advisors should understand why most Americans do not have even the most basic estate plan in place. Advisors should also pay attention to the validity of wills for those people who do have a will or are engaged in the estate planning process. Will contests are surprisingly common, and nontraditional wills such as handwritten and oral wills, as well as do-it-yourself wills prepared without an attorney, may be less likely to meet legal requirements.

#### Why Fewer Americans Are Making Wills

If you want to nudge a client toward creating a will, you need to understand why they have neglected this task—and what could inspire them to take action. The top reasons cited for not having a will in a recent Caring.com survey<sup>1</sup> are

- procrastination (43 percent),
- a belief that they are too poor or do not have enough assets (40 percent),
- unsure how (16 percent), and
- costs too much (16 percent).

Respondents who say they do not have a will are made up of various ages and races and have a range of incomes and educational backgrounds. There are also different ages, genders, and income levels among those who reported what finally motivated them to create a will. But, unfortunately, among all groups, 23 percent said nothing would motivate them to get a will.<sup>2</sup>

#### Types of Wills

A will is a legal document that states how a person wishes to pass down their assets (money and property) when they die. A will should reference the beneficiaries who will receive the deceased's assets, how much each beneficiary will receive, who will administer their estate and wind down their affairs, and, if they have minor children, who will serve as their guardian (and backup guardian).

Ideally, a will is typewritten and signed by the willmaker (the *testator*) and two or three witnesses (depending on state law). Additionally, it is recommended that the testator engage the assistance of an experienced estate planning attorney to help ensure that the will meets all applicable legal requirements. An attorney can also help navigate through potential issues that could otherwise lead to a will contest in the future.

Some states allow handwritten wills (known as *holographic wills*) and oral wills (known as *nuncupative wills*).

- **A holographic will** is handwritten and signed in the testator's own hand, and it may not require witnesses to be valid. Requirements vary in states that recognize holographic wills.

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<sup>1</sup> Rachel Lustbader, *2024 Wills and Estate Planning Study*, Caring.com, <https://www.caring.com/caregivers/estate-planning/wills-survey/> (last visited Jul. 31, 2024).

<sup>2</sup> *Id.*

- **A nuncupative will**, informally referred to as a “deathbed will,” is stated orally, usually in a recording or to a witness. Most states do not recognize oral wills as valid; if they do, only certain people under limited circumstances are allowed to use them.

Why would somebody create a handwritten or oral will instead of a traditional, typewritten one? Often, it is because they have not yet created a formal will, and an emergency forces their hand. Sensing that time is of the essence, they either jot down their wishes or tell them to a loved one, hoping that their loved ones will follow their instructions after they have passed away.

### **Potential Issues with Oral and Handwritten Wills**

Informally created wills can raise numerous issues. Such a situation famously occurred with the estate of Aretha Franklin. The Queen of Soul had a handwritten will that was recognized in her home state of Michigan. However, difficulty deciphering her intentions due to scribbles and hard-to-read passages led to a lengthy legal dispute among her heirs.

This is a major issue with handwritten and oral wills: they are more prone to containing mistakes and ambiguities that cause confusion or lead to extensive litigation. The validity of holographic and nuncupative wills can also be harder to prove.

It is up to the court to validate a will. If the court does not accept the offered will, state law—rather than the testator’s wishes—could dictate how estate assets are divided among loved ones.

An unclear will can also lead to an heir contesting it. Research suggests that up to 3 percent of all wills in the United States are contested in court.<sup>3</sup> Will contests undermine the testator’s intent and can deplete estate assets and turn loved ones against one another.

### **Beyond Simple Wills**

Planning how your money and property will be passed down to your loved ones is the most fundamental function of a will. Even the most basic will includes provisions naming a personal representative, beneficiaries, and guardians of minor children. A will can also include more advanced planning provisions that provide more context and details about distributions, such as instructions for pet care or for an inheritance left to a minor child or other individual who may need their inheritance managed and safeguarded for a period of time or indefinitely.

A will is a must-have estate planning document for anyone 18 or older. It just scratches the surface, though. Clients, especially those with larger estates, should also consider a revocable living trust to manage their assets without court involvement, powers of attorney that provide trusted decision-makers the authority to make financial and medical decisions on the client’s behalf, and a living will (if allowed in your state) that gives instructions about medical care and end-of-life decisions.

### **Financial Planning for the Present and Future**

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<sup>3</sup> Margaret Ryznar & Angelique Devaux, *Au Revoir, Will Contests: Comparative Lessons For Preventing Will Contests*, 14 Nev. L. J. 1 (Jan. 15, 2014), <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1525&context=nlj>.

Working together, we can bring greater effectiveness and continuity to clients' big-picture financial goals of investing, saving, tax strategies, estate planning, philanthropy, and legacy. Collaborating ensures we are serving the best interests of our clients.

To discuss how we can help you use estate planning considerations to deliver a better client experience, build loyalty, and introduce new revenue streams, please reach out and schedule a meeting.