

Understanding the Florida Last Will and Testament

An Educational Overview of Wills, Probate, and What Happens Without a Will in Florida,
with Links to the Florida Statutes and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What a Will Is — and What It Is Not

A **last will and testament** is a written instrument, signed with the formalities Florida law requires, in which a person (the **testator**) directs how property owned in his or her name alone should be distributed after death, names a **personal representative** (the Florida term for executor) to carry out those directions, and may nominate a guardian for minor children. Wills in Florida are governed by Part V of [Chapter 732, Florida Statutes](#), the Florida Probate Code.

A will **takes effect only at death** and can be changed or revoked at any time while the testator is alive and competent. It controls only **probate assets** — property that does not already pass to someone by operation of law or contract. A will does **not** control:

- Property owned jointly with right of survivorship or as tenants by the entirety (it passes to the survivor);
- Life insurance, annuities, retirement accounts, and bank or brokerage accounts with a named beneficiary or payable-on-death / transfer-on-death designation (see [§ 732.703](#) and [Chapter 655, Part III](#));
- Property held in a trust (the trust document controls);
- Real estate conveyed by an enhanced life estate (Lady Bird) deed or other deed that passes title at death;
- Protected homestead, which passes under the Florida Constitution and statute when a spouse or minor child survives (Section 6).

Because of this, a will is best understood as **one piece** of a plan. Many Floridians find that beneficiary designations and deeds move most of their estate, and the will serves as the backstop for anything that falls through.

2. Who Can Make a Will

Any person who is **at least 18 years old** (or an emancipated minor) and of **sound mind** may make a will. See [§ 732.501, Fla. Stat.](#) “Sound mind” — testamentary capacity — means the testator generally understands the nature and extent of his or her property, the natural objects of his or her bounty (family), and the practical effect of the will. It is a lower standard than the capacity needed for a contract, and a person with a diagnosis of dementia may still have capacity during lucid periods. Capacity is judged at the moment of signing.

3. How a Florida Will Must Be Signed

Florida's execution requirements are strict, and a will that does not meet them is **void**, not merely defective. Under [§ 732.502, Fla. Stat.](#):

- The will must be **in writing**;
- The testator must **sign at the end** of the will (or another person may sign the testator's name at the testator's direction and in the testator's presence);
- The testator must sign, or acknowledge a prior signature, **in the presence of at least two attesting witnesses**; and

- The **witnesses must sign in the presence of the testator and of each other.**

A notary is **not** required for the will itself to be valid. However, nearly every Florida will is also made **self-proved** by attaching the affidavit described in [§ 732.503, Fla. Stat.](#), signed by the testator and both witnesses before a notary. A self-proved will is admitted to probate without the court having to locate the witnesses and take their testimony, which saves time and expense later. Florida does **not** recognize unwitnessed handwritten (holographic) wills or oral (nuncupative) wills, even if they were valid where made ([§ 732.502\(2\)](#)).

Who may be a witness

Any competent person may witness a will, and a will is not invalid because a witness is also a beneficiary ([§ 732.504, Fla. Stat.](#)). As a matter of practice, however, using witnesses who receive nothing under the will avoids any later argument about undue influence.

Electronic wills

Since 2020, Florida has permitted electronic wills signed and witnessed through audio-video communication under detailed requirements in [§§ 732.521–732.525, Fla. Stat.](#), including use of a qualified custodian. These are specialized documents outside the scope of this report.

4. What a Will Typically Contains

- **Identification and revocation clause** — names the testator, states domicile, and revokes all prior wills and codicils.
- **Family information** — spouse and children (including children intentionally omitted), so that the pretermitted-heir rules (Section 6) do not apply unexpectedly.
- **Payment of debts, expenses, and taxes** — who bears them and from which assets.
- **Specific gifts** — particular items or sums to named people or charities. Florida allows a **separate written list** of tangible personal property (furniture, jewelry, vehicles, collections) that the testator can change without re-executing the will, if the will refers to it. See [§ 732.515, Fla. Stat.](#)
- **Residuary clause** — disposes of everything not specifically given. A will without a residuary clause leaves the remainder to pass by intestacy.
- **Contingent beneficiaries** — who takes if a primary beneficiary dies first. Florida's anti-lapse statute ([§ 732.603](#)) supplies a default rule for certain relatives, but stating the intent is clearer.
- **Personal representative** — the person or institution nominated to administer the estate, with alternates, and whether bond is waived. Florida restricts who may serve: a Florida resident, or a non-resident who is a close relative (spouse, parent, child, sibling, and certain others). See [§§ 733.302–733.304, Fla. Stat.](#)
- **Guardian of minor children** — a nomination the court gives great weight to under [§ 744.3046](#) and Chapter 744.
- **Testamentary trust provisions** — for example, holding a young beneficiary's share until a stated age, or a special needs trust for a disabled beneficiary.
- **Powers of the personal representative** — typically incorporating the statutory powers in [§ 733.612, Fla. Stat.](#)
- **Signature block, attestation clause, and self-proving affidavit.**

5. Changing or Revoking a Will

A will may be revoked by a **later will or codicil** executed with the same formalities, or by the testator **physically destroying** it (burning, tearing, canceling, or obliterating) with intent to revoke. See [§§ 732.505–732.506, Fla. Stat.](#) Writing on the face of a will, crossing out paragraphs, or initialing changes does **not** validly amend it and may create arguments about whether the whole will was revoked. Changes are made by a **codicil** (a formal amendment signed with full will formalities) or, more commonly today, by signing a new will.

Marriage and divorce

Divorce automatically revokes any provision of a will in favor of the former spouse and any nomination of the former spouse as personal representative, unless the will or the dissolution judgment says otherwise; the former spouse is treated as having died first. See [§ 732.507\(2\), Fla. Stat.](#) **Marriage** after a will is signed does *not* revoke the will, but the new spouse generally receives an intestate share as a **pretermitted spouse** unless the will provided for the spouse, the spouse waived rights in a marital agreement, or the will shows the omission was intentional. See [§ 732.301, Fla. Stat.](#)

6. Rights a Will Cannot Override

Florida law gives a surviving spouse and minor children protections that take priority over the terms of a will:

- **Homestead.** If the owner is survived by a spouse or a minor child, the homestead **may not be devised** except to the spouse (and only if there is no minor child). An attempted devise that violates this rule is ineffective, and the homestead passes by statute: a life estate to the spouse with a vested remainder to the descendants, or, at the spouse's election, an undivided one-half interest. See [Art. X, § 4\(c\), Fla. Const.](#), [§ 732.401](#), and [§ 732.4015, Fla. Stat.](#)
- **Elective share.** A surviving spouse may elect to take **30% of the “elective estate”** — a broad measure that includes not only probate assets but also revocable trusts, joint accounts, certain retirement accounts and life insurance cash value — instead of what the will provides. See [§§ 732.201–732.2155, Fla. Stat.](#) The right may be waived in a valid prenuptial or postnuptial agreement ([§ 732.702](#)).
- **Exempt property and family allowance.** The spouse (or children) may claim household furnishings up to a stated value, two motor vehicles, and certain other items free of creditor claims ([§ 732.402](#)), and a family allowance for support during administration ([§ 732.403](#)).
- **Pretermitted children.** A child born or adopted after the will is signed, and not provided for or intentionally omitted, receives an intestate share. See [§ 732.302, Fla. Stat.](#)

7. What Happens Without a Will — Intestacy

A person who dies without a valid will dies **intestate**, and Florida law supplies the heirs under [§§ 732.101–732.111, Fla. Stat.](#) In broad outline:

- **Spouse, no descendants** (or all descendants are also the spouse's): the spouse takes **everything**.

- **Spouse and descendants, where either the decedent or the spouse has children from another relationship:** the spouse takes **one-half** and the decedent's descendants take the other half.
- **No spouse:** descendants take all; if none, parents; if none, siblings and their descendants; and so on through more remote relatives.
- If no heir can be found at all, the property escheats to the State of Florida ([§ 732.107](#)).

Intestacy does not avoid probate — it simply means the court applies the statutory formula and appoints a personal representative according to the statutory order of preference ([§ 733.301](#)) rather than the decedent's choice. Blended families, unmarried partners, stepchildren, and favored charities receive nothing under intestacy.

8. Probate — What the Will Goes Through

A will has no legal effect until it is **admitted to probate** by the circuit court. The custodian of an original will must **deposit it with the Clerk** of the court in the county of the decedent's domicile within **10 days** after learning of the death, whether or not a probate is opened. See [§ 732.901, Fla. Stat.](#) Florida has two main forms of administration under [Chapter 733](#) and [Chapter 735](#):

- **Formal administration** — the full process: the court appoints a personal representative, issues Letters of Administration, creditors receive notice and have a claims period (generally three months from first publication), assets are collected, debts and expenses paid, and the remainder distributed. Attorney representation is required for the personal representative in formal administration under Florida Probate Rule 5.030, except where the personal representative is the sole interested person.
- **Summary administration** — a shortened procedure available when the probate estate (excluding exempt property and protected homestead) is worth **\$75,000 or less**, or the decedent has been dead for more than two years. The court enters an order distributing the assets directly. See [§§ 735.201–735.2063, Fla. Stat.](#)
- **Disposition without administration** — for very small estates consisting only of exempt personal property and non-exempt property not exceeding the funeral and final medical expenses. See [§ 735.301, Fla. Stat.](#)

A will can shorten and simplify probate — by waiving bond, naming the personal representative, and resolving who gets what — but a will alone does not *avoid* probate. Avoiding probate is accomplished by titling assets so they pass outside the will (Section 1).

9. Federal Estate Tax and Income Tax Notes (Information Only)

- Florida has **no state estate tax, inheritance tax, or gift tax**.
- The **federal estate tax** applies only to estates above a very large exemption amount (indexed annually and set by [26 U.S.C. § 2010](#)). The vast majority of Florida estates owe none. Married couples may preserve a deceased spouse's unused exemption ("portability") by filing a timely estate tax return.
- Assets passing at death generally receive a **stepped-up income-tax basis** to fair market value under [26 U.S.C. § 1014](#), which can eliminate capital-gains tax on lifetime appreciation. Assets given away during life generally carry over the donor's basis instead.

- Inherited retirement accounts have their own distribution rules under [26 U.S.C. § 401\(a\)\(9\)](#) (including the 10-year rule for most non-spouse beneficiaries). Naming beneficiaries directly on the account, rather than through the will, matters here.

10. Practical Points Frequently Discussed

- **Keep the original safe and findable.** Florida courts generally require the **original** will. A lost or destroyed original is presumed revoked, and proving a copy requires a separate court proceeding under [§ 733.207](#). A fireproof box at home or a safe deposit box (with the personal representative able to access it) is typical.
- **Coordinate beneficiary designations.** A will that says “everything to my three children equally” does nothing if the 401(k) still names one child.
- **Review after life events** — marriage, divorce, births, deaths, a move to or from Florida, a significant change in assets.
- **Out-of-state wills** are generally valid in Florida if valid where executed, except holographic and nuncupative wills ([§ 732.502\(2\)](#)). A self-proving affidavit from another state may need to be re-executed to meet Florida's form.
- **Pets.** Florida permits an enforceable trust for the care of an animal ([§ 736.0408](#)).
- **Digital assets.** A will or other document may authorize the personal representative to access online accounts under the Florida Fiduciary Access to Digital Assets Act, [Chapter 740, Fla. Stat.](#)
- **Living will is different.** A “living will” ([Chapter 765](#)) is a health-care directive about life-prolonging procedures, not a will that disposes of property.

11. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 732, Fla. Stat. — Florida Probate Code: Intestate Succession and Wills](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter732>

[§ 732.501 — Who may make a will](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.501>

[§ 732.502 — Execution of wills](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.502>

[§ 732.503 — Self-proof of will](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.503>

[§ 732.504 — Who may witness](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.504>

[§§ 732.505–732.506 — Revocation by writing; revocation by act](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.505>

[§ 732.507 — Effect of subsequent marriage, birth, adoption, or dissolution](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.507>

[§ 732.515 — Separate writing identifying devises of tangible property](https://www.flsenate.gov/Laws/Statutes/2025/732.515)

<https://www.flsenate.gov/Laws/Statutes/2025/732.515>

[§§ 732.521–732.525 — Electronic wills](https://www.flsenate.gov/Laws/Statutes/2025/732.521)

<https://www.flsenate.gov/Laws/Statutes/2025/732.521>

[§§ 732.101–732.111 — Intestate succession](https://www.flsenate.gov/Laws/Statutes/2025/732.102)

<https://www.flsenate.gov/Laws/Statutes/2025/732.102>

[§§ 732.201–732.215 — Elective share of surviving spouse](https://www.flsenate.gov/Laws/Statutes/2025/732.201)

<https://www.flsenate.gov/Laws/Statutes/2025/732.201>

[§ 732.301 & § 732.302 — Pretermitted spouse; pretermitted children](https://www.flsenate.gov/Laws/Statutes/2025/732.301)

<https://www.flsenate.gov/Laws/Statutes/2025/732.301>

[§ 732.401 & § 732.4015 — Descent and devise of homestead](https://www.flsenate.gov/Laws/Statutes/2025/732.4015)

<https://www.flsenate.gov/Laws/Statutes/2025/732.4015>

[§ 732.402 & § 732.403 — Exempt property; family allowance](https://www.flsenate.gov/Laws/Statutes/2025/732.402)

<https://www.flsenate.gov/Laws/Statutes/2025/732.402>

[§ 732.603 — Antilapse](https://www.flsenate.gov/Laws/Statutes/2025/732.603)

<https://www.flsenate.gov/Laws/Statutes/2025/732.603>

[§ 732.702 — Waiver of spousal rights](https://www.flsenate.gov/Laws/Statutes/2025/732.702)

<https://www.flsenate.gov/Laws/Statutes/2025/732.702>

[§ 732.703 — Effect of dissolution on beneficiary designations](https://www.flsenate.gov/Laws/Statutes/2025/732.703)

<https://www.flsenate.gov/Laws/Statutes/2025/732.703>

[§ 732.901 — Production of wills \(10-day deposit\)](https://www.flsenate.gov/Laws/Statutes/2025/732.901)

<https://www.flsenate.gov/Laws/Statutes/2025/732.901>

[Florida Constitution, Article X, § 4 — Homestead](https://www.flsenate.gov/Laws/Constitution)

<https://www.flsenate.gov/Laws/Constitution>

[Chapter 733, Fla. Stat. — Probate Code: Administration of Estates](https://www.flsenate.gov/Laws/Statutes/2025/Chapter733)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter733>

[§§ 733.302–733.304 — Who may serve as personal representative](https://www.flsenate.gov/Laws/Statutes/2025/733.304)

<https://www.flsenate.gov/Laws/Statutes/2025/733.304>

[§ 733.612 — Powers of personal representative](https://www.flsenate.gov/Laws/Statutes/2025/733.612)

<https://www.flsenate.gov/Laws/Statutes/2025/733.612>

[§ 733.207 — Establishment of a lost or destroyed will](https://www.flsenate.gov/Laws/Statutes/2025/733.207)

<https://www.flsenate.gov/Laws/Statutes/2025/733.207>

[Chapter 735, Fla. Stat. — Summary administration; disposition without administration](https://www.flsenate.gov/Laws/Statutes/2025/Chapter735)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter735>

[Chapter 740, Fla. Stat. — Fiduciary Access to Digital Assets Act](https://www.flsenate.gov/Laws/Statutes/2025/Chapter740)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter740>

[§ 744.3046 — Preneed guardian for minor](https://www.flsenate.gov/Laws/Statutes/2025/744.3046)

<https://www.flsenate.gov/Laws/Statutes/2025/744.3046>

[Florida Probate Rules, via The Florida Bar](https://www.floridabar.org/rules/ctproc/)

<https://www.floridabar.org/rules/ctproc/>

[26 U.S.C. § 2010 — Federal estate tax unified credit](https://www.law.cornell.edu/uscode/text/26/2010)

<https://www.law.cornell.edu/uscode/text/26/2010>

[26 U.S.C. § 1014 — Basis of property acquired from a decedent](https://www.law.cornell.edu/uscode/text/26/1014)

<https://www.law.cornell.edu/uscode/text/26/1014>

[26 U.S.C. § 401\(a\)\(9\) — Required distributions from inherited retirement plans](https://www.law.cornell.edu/uscode/text/26/401)

<https://www.law.cornell.edu/uscode/text/26/401>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rrtfb/)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf

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Respectfully prepared for your education,

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