

Questions and Answers About the Michigan Statutory Will

1. What happens if I die without a will?

With certain exceptions, your possessions are divided according to state law among your closest relatives. You are said to have died "intestate."

2. What can I accomplish by making out a will?

You can choose who is to receive your property; select someone to serve as personal representative (formerly known as executor); and appoint a guardian for your children under age 18. A person who dies having made a valid will is said to have died "testate."

3. If I have a will, do I avoid probate?

No. Whether or not you die with a will, your property will usually go through probate, which is a process through which the probate court oversees distribution of your assets. If there is a will, the initial purpose of probate is to prove that the will is valid.

4. Does all property go through probate?

No. For example, money held in a joint bank account automatically belongs to the other owner. If your spouse's or child's name is on the deed to your house, the house automatically belongs to him or her. Life insurance benefits go directly to the beneficiary named in the policy. A will has no effect on these types of property, which are known collectively as the "non-probate" estate.

5. If property is specified in my will, can I give it away or sell it during my life?

Yes. Your will has absolutely no effect until you die. If you have sold or given away property mentioned in the will, that provision of the will is simply ignored; this has no effect on the rest of your will.

6. Are there different types of wills?

Yes. There are handwritten wills, typewritten wills, and statutory wills. Each type is equally valid if done precisely in accordance with the law. It is recommended you see a lawyer if you do not use the statutory will in this brochure.

7. What can I accomplish through using a statutory will?

- (a) You can leave up to two cash gifts of any amount to people or charities.
- (b) You can write a list of personal and household items, and name who is to receive each item.
- (c) The rest of your property goes to your husband or wife. If he or she dies before you, this property would be divided equally among your children.
- (d) You can select a personal representative to administer your property.
- (e) You can appoint a guardian and conservator in case you and your spouse both die before your children reach age 18.

8. Are there any reasons for me NOT to use the statutory will provided in this brochure?

There may be. If you have substantial wealth and need tax planning for your estate, you should consult a lawyer who handles estate planning and probate. If you think you might have such problems, speak with a lawyer to see if more complex planning is indicated. Consultation with a lawyer is strongly recommended if you want to establish a trust fund for your children's education, if you have assets outside the state of Michigan, or if you have a significant interest in a business partnership.

9. I have a wife and two young children. Might a statutory will be appropriate for my purposes?

Perhaps. A statutory will might be appropriate if you do not have extensive assets and, therefore, do not need tax planning.

In a statutory will, you can appoint a guardian for your children and a conservator for your children's assets.

10. I would like to leave my favorite niece an antique brooch. Can I do this with a statutory will?

Yes. A statutory will allows you to leave gifts of personal items by making a list of the items and the person you want to receive each item.

11. I am a widow with no children. Could a statutory will be appropriate for me?

If you do not have substantial assets and you do not object to the limited options for disposing of your property, you may want to use the simple statutory form.

12. I own a house, a condominium, and much stock. Should I use a statutory will?

Perhaps not. A statutory will is not designed to reduce federal or state taxes on your estate. If you have very substantial assets, check with a lawyer to see if tax planning is recommended.

13. I am married for the second time and my husband and I each have children from our first marriages. Would a statutory will be appropriate for my purposes?

Probably not. The statutory will provides that your estate goes to your husband if he survives you. The statutory will does not give you an adequate way to provide for the children from your first marriage. Speaking with a lawyer is certainly a good idea for a person involved in a second marriage.

14. I have rather complicated business interests, which I wish to pass on through my will. Would a statutory will be appropriate for my purposes?

No. A statutory will does not provide for any specific business planning.

15. What should I do if a statutory will doesn't meet my needs?

Contact a lawyer with knowledge of estate planning. He or she can draft a will to meet your specific needs.

16. How can I find a good lawyer?

There is no sure-fire way. Here are some suggestions:

- (a) If you have dealt with a lawyer in the past and were satisfied, go back to that person. A lawyer who does not handle estate planning will be happy to recommend someone who does.
- (b) Ask friends, neighbors, or relatives for someone they have been pleased with.
- (c) Ask a person you respect, such as a religious leader, or call an organization such as a consumer group or your labor union.

If you decide to use this statutory will, tear out pages 3-10.

(Questions and answers continued on page 11)

(d) Call the county or state bar referral service, which will provide you with the names of two or three lawyers.

(e) Consult the yellow pages or newspaper classified section.

Don't be intimidated. Don't be afraid to "shop around" for someone you are comfortable with and whose services you can afford.

17. How do I proceed to use the statutory will form?

First, thoroughly read the **entire** form. Read the notice at the beginning and the definitions at the end.

After you are **sure** you understand **all** of the will's provisions, carefully follow directions and fill in the blanks.

In reading over the form, the following questions may arise:

18. May I use a statutory will form and yet leave no cash gifts? (Article 2.1)

Yes. You may leave no cash gifts, one cash gift, or two cash gifts. If you do leave a cash gift, it is particularly important that you give a complete address for the person or charity to receive the money.

19. How do I go about preparing a list of personal items? (Article 2.2)

If you wish, you may make a list on a separate piece of paper of possessions such as jewelry, books, automobiles, furniture and other personal and household items. On the list you name who is to receive each item—a family member, friend, or neighbor.

The list can be as short or long as you choose. Make sure you describe each item sufficiently to avoid confusion. For each person who is to get an item, include his or her full name and address.

The list must be in your handwriting or signed by you. It is a very good idea to include the date.

You may make the list before you complete the statutory will form, at the same time, or afterward. You can change the list as often as you wish. It is a good idea to staple or firmly attach the **newest** list to your will.

20. What is the purpose of Article 2.3?

This provision sets out the division of your property (other than cash gifts and the list of items) if your spouse, children, grandchildren and great-grandchildren **all** die before you.

You have a choice: you may leave all the property to your other blood relatives who survive you, or leave one-half to those relatives and one-half to your spouse's blood relatives. Make your choice by signing your name under the appropriate paragraph.

21. Need I complete Article 3.2 if all of my children are over 18?

No. You may skip Article 3.2 relating to guardians and conservators.

22. How do I decide whether to have my personal representative serve with or without bond? (Article 3.3)

Most people these days request that the personal representative serve **without** bond. If you are careful to choose a person you trust to be personal representative, there seems little need to spend your money for a bond.

23. Who may be a witness to my will?

Any adult who will **not** receive any possessions or money under your will may be a witness. This is important. A person who may receive money or property under your will should never be a witness to your will.

You need not tell witnesses about the contents of your will.

24. After the will is completed, where should I keep it?

One option is to file it in probate court at the cost of \$5.00. Wherever you keep the will, it is a good idea to attach the list of personal items to the will. You may want to give a copy of the will to the person you have selected as personal representative. (Remember: If you decide to use the statutory will from this booklet, tear out pages 3-10.)

25. Can I make changes to my statutory will?

Yes. Since a will has absolutely no effect until you die, you can change the will during your life. But do not write on the will. You can either have a codicil (amendment) drafted, complete a new statutory will, or have an entire new will drafted by a lawyer. If you sign a new will, destroy copies of the old one.

You can change the list of personal property items at any time. It is probably best to write a whole new list if you decide to make changes.

26. If I move from Michigan would my statutory will still be valid?

Probably yes. It would be a good idea to check with a lawyer who practices law in the state of your new residence.

Michigan Statutory Will

NOTICE

1. Any person age 18 or older and of sound mind may sign a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.
3. **Warning!** It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.
4. This will has no effect on jointly-held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.
5. This will is not designed to reduce inheritance or estate taxes.
6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.
7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file the will in your county's probate court for safekeeping. You should tell your family where the will is kept.
8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.
2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

Michigan Statutory Will of

(Print or Type Your Full Name)

Article 1. Declarations

This is my will and I revoke any prior wills and codicils. I live in
_____ County, Michigan.

My spouse is _____
(Insert spouse's name or write "None")

My children now living are:

(Insert names or write "None")

Article 2. Disposition of My Assets

2.1 CASH GIFTS TO PERSONS OR CHARITIES. *(Optional)*

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amounts stated here. Any inheritance tax due shall be paid from the balance of my estate and not from these gifts.

Full name and address of person or charity to receive cash gift.
(Name only one (1) person or charity here)

(Please print) _____
(Insert name)

of _____
(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ dollars

(Your Signature)

Full name and address of person or charity to receive cash gift.
(Name only one (1) person or charity here)

(Please print) _____
(Insert name)

of _____
(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ dollars

(Your Signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on any such separate list or statement. If I am not married at the time I sign this will, or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

Any inheritance tax due shall be paid from the balance of my estate and not from these gifts.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will, or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose **one** of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, or if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution Clause, If No Spouse, Children, Or Descendants Of Children
Survive Me. *(Select only one)*

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your Signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your Signature)

Article 3. Nominations of Personal Representative, Guardian, and Conservator

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE. *(Name at least one)*

I nominate _____
(Insert name of person or eligible financial institution)
of _____
(Insert address)
to serve as personal representative.

If my first choice does not serve, I nominate

(Insert name of person or eligible financial institution)
of _____
(Insert address)
to serve as personal representative.

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name a person as guardian of the child, and a person or eligible financial

institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for any child of mine, I nominate

_____ (Insert name of person)
of _____ (Insert address) as guardian
and _____ (Insert name of person or eligible financial institution) of
_____ (Insert address) as
conservator.

If my first choice cannot serve, I nominate

_____ (Insert name of person)
of _____ (Insert address) as guardian
and _____ (Insert name of person or eligible financial institution) of
_____ (Insert address) as
conservator.

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. *(Select only one)*

(a) My personal representative and any conservator I have named shall serve with bond.

(Your Signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your Signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on,

_____, 19____ .

(Your Signature)

NOTICE REGARDING WITNESSES

You must use two (2) adult witnesses who will not receive assets under this will. It is preferable to have three (3) adult witnesses. All the witnesses must observe you sign the will, or have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the person who is making this will appears to be of sound mind and appears to be making this will freely and without duress, fraud, or undue influence and that the person making this will acknowledges that he or she has read, or has had it read to them, and understands the contents of this will.

(Print Name) _____ (Signature of Witness)

(Address)

(City) (State) (Zip)

(Print Name) _____ (Signature of Witness)

(Address)

(City) (State) (Zip)

(Print Name) _____ (Signature of Witness)

(Address)

(City) (State) (Zip)

Definitions

The following definitions and rules of construction shall apply to this Michigan statutory will:

(a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) "Jointly-held assets" means those assets ownership of which is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(c) "Spouse" means your husband or wife at the time you sign this will.

(d) "Descendants" means your children, grandchildren, and their descendants.

(e) "Descendants" or "children" includes persons born or conceived during marriage, persons legally adopted, and persons born out of wedlock who would inherit if their parent died without a will.

(f) Whenever a distribution under a Michigan statutory will is to be made to a person's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

(g) "Heirs" means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws which are then in effect.

(h) "Person" includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in a good faith exercise of the person's powers.

Additional Clauses

(a) Powers of personal representative.

(1) The personal representative shall have all powers of administration given by Michigan law to independent personal representatives, and the power to invest and reinvest the estate from time to time in any property, real or personal, even though such investment, by reason of its character, amount, proportion to the total estate, or otherwise, would not be considered appropriate for a fiduciary apart from this provision. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax basis, and may make non pro rata distributions.

(2) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to (a) the conservator, or (b) in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or any adult person with whom the minor resides and who has the care, custody, or control of the minor; or the guardian. The personal representative is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(b) Powers of guardian and conservator.

A guardian named in this will shall have the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will shall have all of the powers conferred by law.