



# Missouri

## *Ag Law Brief*

### **Introduction to Wills**

A Will is a legal document which specifies the wishes of a person, called the Testator, regarding how she wishes to have her property distributed after her death. It may also specify her wishes regarding the care of any minor or special needs children. A Will is sometimes referred to as a “Last Will and Testament”, although the words “and Testament”, which still linger from the early days of our legal system, are not required and the word “Last” is somewhat of a useless add-on based on the idea that the testator is declaring the current document as her “most recent version.” Unfortunately, in such a role, the term “Last Will” is actually redundant. One would not construct their “Next to Last Will.”

The dated and signed Will along with the destruction of all previous Wills discussed below will serve as the best legal evidence that a document is in fact the Testator’s final wishes as expressed in their Will. The Will document may also identify one or more persons whom the Testator wishes to manage her Estate and the distribution of her property according to her wishes after her death. This person is known as the Executor of the Will.

The Testator’s “Estate” refers to all of their real property (land) and personal property, including cash, investments, and other financial assets. A Will can be very helpful in the Estate Planning process as well as very helpful to those who are left behind after the Testator’s death. There are countless examples of farm businesses that have endured substantial struggles because the deceased did not leave a thoughtfully constructed Will.

For example, the estate of the deceased might be tied up in the Probate Process for months or years as the potential Beneficiaries fight over the allocation of the deceased’s assets. An additional problem this has created for farm families is that money needed for operating funds, which would have been available quicker with a properly executed Will, is locked up by the court system during a time when there is often a critical cash flow need on the farm. The money which is locked up in Probate and ultimately transferred to the operating business owners who needed it much earlier might have prevented a financial crisis if the Probate process was shortened with a valid Will.

All Wills substantial enough to involve a farm business must still go through the Probate Process in Missouri. A Will which removes ambiguities as to what assets are to be given to what Beneficiaries may help minimize tensions between family survivors during a very difficult time leaving fewer potential family or legal battles over the deceased’s assets.

A deceased person who does not leave a legally executed valid Will is said to have died “Intestate.” The absence of a valid Will automatically places the distribution of the deceased assets under a default formula, or set of rules, established by the Missouri legislature. These rules are referred to as Intestacy Statutes. In this case, a Judge will appoint an Administrator to oversee the distribution of the deceased’s assets in accordance with the default formula.



Generally speaking, the formula results in half of the deceased's Estate going to her spouse and the other half going to her children. Such a scenario may result in the sale of the family farm or other assets negatively impacting the surviving spouse and family. This can create financial and emotional difficulties, particularly if the deceased's spouse was counting on the bulk the Estate being left to him to maintain the family farm and his standard of living. Further complications can arise if the deceased's children are minors as the court will appoint a representative to look after their interests.

The default formula found in the Intestacy Statutes may or may not result in the distribution of the deceased assets in such a way that maximizes the possibility that the family business will be able to continue. The default formula was not created for that purpose. It is a strict set of rules which do not give weight to their impact on the deceased's family or farm business. This is another reason why it is so critical to thoughtfully consider and execute a legally enforceable Will. Tax considerations are another important issue to consider as a properly prepared Will can minimize tax liability. This is particularly important to people with Estates large enough to be subject to Estate Taxes.

Recall, a Will specifies the "wishes" of the Testator. In general, when a Will is constructed properly and legally executed, those wishes are carried out by the Executor. However, there is a legal process that occurs after the Testator's death, called Probate, in which a Probate Court will determine whether the "Last Will" which was presented to the court is indeed the last (final) Will executed by the deceased as well as whether and how the provisions within that Will are to be carried out

by the Executor. In addition, the Probate process is a time which allows potential Beneficiaries to contest provisions of the Will or even the validity of the Will itself. During Probate the Executor must also follow statutory procedures to identify any creditors which may have claim to part of the assets of the deceased prior to the distribution of the assets to the Beneficiaries. The Probate process may take months to complete if all goes smoothly.

There may be assets of the deceased which are not distributed under the provisions of their Will. These items include community property, proceeds from life insurance policies, retirement annuities, assets owned as joint tenants with rights of survivorship, Trusts, and certain "transfer on death" financial documents or titles. These types of assets are actually tools which the testator may use to transfer assets to Beneficiaries and avoid the Probate process. The obvious primary benefit of using these Probate Avoidance tools is to be able to transfer ownership of the assets of the deceased to intended beneficiaries without any time delay. These Probate Avoidance tools are sometimes referred to as Will Substitutes.

In Missouri, any person of "sound mind" (despite conventional wisdom, there is no requirement that a testator's body also be in "sound" condition) over the age of 18 may execute a Will devising her real and personal property to the Beneficiaries of her choice as well as designating that all or part of her body shall be made available for scientific study. Minors may also legally execute a Will if they have been legally adjudicated, they are married or in active military duty. A Will must be in writing, with very limited exceptions, to be executed.



The “Execution” of the Will is simply the Testator signing and dating the document. The Will must be signed by two or more witnesses. They must witness the Testator signing the Will but they do not have to sign at the same time as the Testator and they do not have to have any knowledge of the specific contents of the Will only that the document is the Testator’s Will. The witnesses should not be Beneficiaries in the Will as it may jeopardize their rights to some or all of what the Will indicates they should receive.

Often, a Testator may remember personal property items which they had intended to leave to a certain Beneficiary but neglected to specify that gift in their Will or they might acquire personal property after their Will has been executed which they desire to leave to a specific Beneficiary after their death. Under Missouri law, it is not necessary to execute a new Will to accomplish these gifts. A Will may contain a provision which refers to a separate written document, which the Testator might keep in their top desk drawer, for example, and which contains a list of items of tangible personal property and their intended Beneficiaries.

This list may be added to or changed as the Testator wishes. The list may not make any changes to gifts already mentioned in the Will. In other words, this separate list cannot be used to remove the Beneficiary of personal property that was specified in the original Will. The Testator may, however, make changes on the list itself either adding or subtracting Beneficiaries or designated personal property intended to be distributed to certain beneficiaries upon their death. This list, which must be properly identified in the deceased’s Will when it is executed, may be presented in the Probate Process to be authenticated along with the Will itself.

The wishes of the Testator to gift personal property to specific beneficiaries as specified in this list will be carried out as if the list had been included in the text of the actual Will. The list should be handwritten by the testator, signed and dated for every addition or change which is made to the list. The list itself, unlike the Will, does not require witnesses.

Occasionally, problems arise during probate when multiple Wills are produced which are not identical. In these cases, the court must determine, to the best of its ability, the Testator’s final intentions. Multiple Wills are usually the result of a new Will that has been executed by the Testator either improperly revoking a previous Will or not mentioning the previous Will. In either case, the best practice when revising a Will is to use terminology which specifically revokes all previous Wills. In addition, all copies of any previously executed Wills should physically be destroyed. The Testator should, therefore, keep very tight control on who has access to their Will and prevent copies from being produced, leaving no doubt during the probate process which Will is indeed the testator’s “Last Will.”



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