

Kent County Register of Wills

*What do you do when someone
passes away?*

A brief overview of what the law requires
when someone passes away in Delaware.



*We strongly advise you to seek professional legal advice as
this brochure is not intended as a substitute for consulting
with an attorney.*

Kent County Register of Wills

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Register of Wills

Kent County Levy Court

Register of Wills

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302-744-2330

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Monday – Friday 8:00 a.m. – 5:00 p.m.

Appointments must be made for the opening and closing of estates.

What is a will?

A will is a written set of legally enforceable orders directing the transfer of property to named beneficiaries effective upon the death of the maker.

What is required to make a valid will?

1. The maker must be at least 18 years of age and of sound and disposing mind and memory;
2. The will must be in writing. A will written entirely in the Testator's handwriting (a holographic will) is valid in Delaware if the other requirements are met.
3. The will must be signed by the maker or signed by a person writing the maker's name in his/her/their presence and at the maker's direction.
4. The will must be witnessed by two or more credible adult witnesses who were present when the maker

- signed the will. (Yes, a beneficiary may be a witness).
5. Notarization of all signatures is optional, but recommended.

Filing the will after the maker dies

After the maker dies, it is the legal duty of any person in possession of any document that might be a will to deliver it to the Register of Wills within ten (10) days after receiving notice of the maker's death.

Proving the will after the maker dies

The Register of Wills determines a will's validity. A will is proven valid if its witnesses swear to its validity or it has a self-proving page attached with the signature of the two witnesses and a notary. If a will is not proven, it is rejected and has no force or effect.

Probating an estate

When does an estate have to be probated?

An estate must be opened for probate if:

1. The decedent had more than \$30,000 in personal property held in his/her/their name alone.
2. The decedent owned real estate in Delaware in his/her/their name alone (either solely held or as a tenant in common with others).

When does an estate does not need to be probated?

Jointly Held Property If the deceased person held real estate, bank accounts, motor vehicles and/or other property (stocks, bonds, etc.) in joint names with the right of survivorship, then the surviving joint tenant (co-owner)

receives that property upon the death of the deceased person.

This will happen regardless of any contrary language in a will. However, if a catastrophic accident happens resulting in the death of both joint owners, then the will or intestate succession laws determine the disposition of the jointly held property.

If **real estate property** is owned Jointly Held with the Rights of Survivorship (the deed is controlling) with a surviving joint tenant or spouse, the surviving joint tenant or spouse may clear title by filing an *Affidavit of Jointly Held Property*.

Insurance Proceeds Life insurance proceeds are not part of an estate's assets if **paid to a named beneficiary** who survives the insured.

Small Estates if a decedent does not have solely owned real estate and has less than \$30,000 in solely owned personal property (i.e. car, boat, tractor, bank account, etc.), then **only the immediate next of kin** may obtain possession of that property by executing a *Small Estate Affidavit*.

If there is a will and the estate qualifies as a small estate, the person obtaining possession must comply with the terms of the will. If there is no will, they must comply with Delaware's intestate succession laws and, after payment of debts, distribute the assets accordingly.

Probate Procedures

If an estate must be opened for probate, the personal representative (executor or administrator) must petition the Register of Wills for letters of authority to administer the estate. If there is no will, the next of kin, in the following priority, have the right to petition for Letters of Administration:

1. Spouse;
2. Children;
3. Parents;
4. Siblings (of the whole and half-blood).

Therefore, the spouse has priority if the spouse is living. However, the spouse may renounce (give up) his/her/their right to administer the estate. If the next of kin are children, all of the children have an equal right to act. Usually, only one or two people administer an estate. It may be appropriate for the children to agree who should act and the others renounce (give up). They must file a **notarized renunciation form** with the Register of Wills before the estate can be opened and letters issued.

If there are no next of kin having priority or none of those persons has applied to administer the estate within 60 days of the date of death, then the Register of Wills may appoint any interested person to be the administrator.

Duties of Executor or Administrator

1. File a **certified copy of the death certificate** (this will be returned to you), along with an **original will** (this will not be returned to you), and the petition for authority to act;
2. Schedule an **appointment** to open the estate and, at the time of the appointment, pay the requisite fees.
3. **Publish legal notice** of the filing of the petition in a local newspaper as required by law (you will sign the notice at the appointment and we will submit it for publication). This notice advises creditors of the death, of the estate opening, and that claims against the estate must be filed within eight (8) months of the date of death.
4. Collect, inquire about, manage, and protect all probate assets.
5. File an **inventory of the assets** within three (3) months after opening the estate, including all jointly held property.
6. Set aside from the assets the **spouses allowance**, if requested, and the spouse's elective share, as required by law.
7. **Pay the valid debts** of the decedent;
8. File and **pay any Federal/State estate taxes** within 9 months of date of death.
9. File an **accounting** within one year of opening the estate. This is a report of the total probate assets received, income earned by the estate, and the debts paid.
10. Close the estate by proving payments of debts and expenses, taking an oath that the estate was administered properly, and paying a closing fee of 1.75% of the “net personal estate” assets.

General Information About Death Benefits

- The Social Security Administration will pay a specific amount as a death benefit for covered individuals who were receiving benefits or are eligible survivors. This benefit is paid to the surviving spouse or to the minor children.
- The Veterans Administration will also pay a benefit for a deceased veteran.
- In addition, the decedent may have purchased funeral insurance, or may have been a member of an organization that provides such related benefits.
- Although it is not the responsibility of the personal representative to see that these amounts are collected and paid, these matters should be investigated in order to discharge his or her duties effectively.

Helpful Resources

- **Community Legal Aid Society, Inc. (CLASI)**
800 Walker Rd.
Dover, DE 19904
(302) 674-8500
- **Delaware State Bar Association**
(302)658-5279
405 N. King Street
Suite 100 Wilmington, DE 19801
- **Delaware Volunteer Legal Services**
Legal Help Link
<https://www.dvls.org/>
(302)478-8680
P.O. Box 7306
Wilmington, DE 19803

- **Delaware Aging and Disability Resource Center**
Milford State Service Center
18 N. Walnut St., First Floor
Milford, DE 19963
(800) 223-9074
DelawareADRC@delaware.gov
- **Legal Services Corporation of Delaware, Inc.**
24A Hiawatha Lane
Dover, DE 19904
(302) 734-8820
- **Life Insurance Policy Search:**
American Council of Life Insurance Policy Search
<https://www.acli.com/pages/missing-policy-tips>
- Medicaid**
DHSS Herman Holloway Campus, Lewis Building
201901 N. DuPont Highway
New Castle, DE 19720
(800) 372-2022 or (302)255-9500
- **Medicare: Delaware Claims Information**
(800) 633-4227
- **Social Security Survivors Benefit**
(877) 701-2141
Blue Hen Corporate Center Suite 3J
655 S Bay Rd., Dover, DE 19904
- **Veterans Administration**
Gravestone Markers for Unmarked Graves
(800) 827-1000
1601 Kirkwood Highway
Wilmington, DE 19805
- **Vital Statistics**
Death Certificates
302-744-4549
417 Federal St.
Dover, DE 19901

Glossary

Administrator/Administratrix - Person appointed by the Register of Wills or the Court to gather and distribute assets of person who died without leaving a Will.

Beneficiary - A person who receives property or other benefits.

Codicil - A supplement or an addition to a Will. It may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in a Will. It must be executed with the same formalities as a Will. **Decedent** - A deceased person; the person who died.

Elective Share - The surviving spouse's right to take a statutory share of the decedent's estate rather than under a Will or the intestate laws.

Estate - Everything a person owned at the time of death.

Executor/Executrix - Person appointed by the testator (maker) to carry out the directions and requests in his/her Will.

Filing/Registration of Will - The filing of an original Will at the Register of Wills office after an individual's death.

Interested Persons - Includes heirs, devisees, children, spouse, creditors, beneficiaries, and any others having a property right in or claim against the estate of a decedent which may be affected by the particular proceeding.

Intestate - A decedent who left no Will. **Intestate Succession** - The laws that stipulate who is to take the decedent's property if the decedent dies without a Will or if the decedent's Will does not dispose of all the property.

Issue - All of a person's lineal decedents of all generations (children, grandchildren, great-grandchildren, etc.).

Letters of Administration - The order issued by the Register of Wills empowering a party to gather and distribute the assets of an estate when the decedent died without a Will or did not name an executor in a Will or where the executor dies, renounces (gives up) his appointment or is not qualified.

Letters Testamentary - The order issued by the Register of Wills to the executor named in the Will of the decedent to allow the executor to administer the estate. Life Estate - A right to use or occupy property for the life of the person named, which ends upon the death or surrender of the person named.

Next of Kin - Those persons most closely related to a decedent by blood (i.e. children, parents, brothers and sisters, etc.).

Personal Property - Any property which is not included in the definition of real property; tangible property such as: furniture, books, automobiles, jewelry and clothes; and, intangible property such as: money, stocks, bonds and/or bank accounts.

Per Stirpes - This phrase refers to the method of dividing a share of an estate where a class or group of beneficiaries takes the share their ancestor would have taken if he/she survived the testator. For example, if person P dies leaving no spouse and is survived by two children A and B and the two children of his deceased child C (E and F) – then A and B would each receive 1/3 of the estate and E and F would equally share C's 1/3, thereby each receiving 1/6.

Probate - 1) The entire system or process provided by law for transferring the property of a decedent to heirs; and, 2) The act or process of proving a Will to be valid before the Register of Wills.

Real Property - Land and things attached to land; buildings, fences, walls, trees, growing crops, etc.

Spouse Allowance - The surviving spouse's right to request up to \$7500 from the personal representative in addition to any other provisions for his/her benefit contained in a Will or by intestate law. A written request sent to the Register of Wills is required.

Testator/Testatrix - Person who makes a Will (the maker).

Witness - A person who is over 18, not incompetent, and witnesses the testator's original signature to a Will and who, in the presence of the testator, signs the Will attesting his presence at the time the testator signed, or acknowledged signing, the Will. A person is not disqualified from being a witness because he or she is a beneficiary of the testator.