

Should You Revoke Your Will?

Let's say you executed a will years ago but you would like to make changes to it to reflect your current situation. Perhaps you got married, divorced, became a parent, sold a business or experienced some other major event. Or maybe one of your beneficiaries died or you had a falling out with one of your children.

There are many reasons why you might want to change your will.

Can you just scratch out some provisions and write in new ones? That is not recommended because it may not be legally valid. You may be able to use a codicil, which is a written document that changes part or all of a will that you legally executed.

However, it is usually best to *revoke* the will and execute a new one. (A codicil involves the same requirements as executing a will.)

A will can be revoked anytime until death, as long as you are mentally competent.

How do you revoke a will? The process is governed by state law but here are some general guidelines:

1. You can create another will, and state in the new document that you revoke all prior wills.
2. You can revoke a will in writing in the same type of ceremony that is required to execute a will. For example, you must follow the same witness requirements. That way, if someone tries to offer your previous will for probate, the witnesses can vouch for the revocation.
3. You can destroy the document by shredding it, burning it, or otherwise thoroughly destroying it. But be careful about putting an X over it or trying to scratch it out -- or the revocation most likely will not take effect.

In some rare situations, you can revoke a will orally. For example, military members on active duty may be able to make changes and execute a will orally.

Important: If you want to revoke a will and you gave copies to your heirs and/or others, contact them to get the copies back. Then, destroy the copies. Although it is unusual, probate courts have accepted will copies when the original could not be located (usually accompanied by an attorney affirming the original execution of the will).

In one case, a Texas court accepted a copy of a will found in the decedent's briefcase after the original couldn't be found. A search was conducted that included not only the deceased man's "house but also his business and the banks with which he maintained a business relationship." The copy was found to be "a true and correct copy of the original" and there was no evidence that the decedent revoked the original. (*Estate of Catlin*, Ct. of Appeals of Texas-Amarillo, No. 07-09-0135-CV, 4/27/10)

The decedent in the case, Jerry Don Catlin, died in December of 2007. For more than a year after his death, Catlin's only biological child and his stepchildren were embroiled in court battles over the will.

The case illustrates the need to store your will in an accessible, safe place and tell trusted individuals where it is located. Otherwise, your estate could be subject to unnecessary, expensive delays. Review your will on a regular basis. You may want a new will as circumstances change. Contact your attorney so the revocation of your will is handled legally and your wishes are ultimately carried out.

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