



Requirements of a Valid Last Will and Testament Under Georgia Law



For a Will to be valid in Georgia, the testator must be 14 years or older and competent to create a Will. The Will must be in writing, signed by the testator, and signed by two witnesses. While a notary and self-proving affidavit are not required, they are highly recommended to ensure that the Will is successfully probated. Please see paragraphs 1 to 7 for specific information and the last page for a sample Georgia self-proving affidavit.

A will, also known as a **Last Will and Testament**, is a legal document in which a person provides instructions for the distribution of their assets, upon death. This document can also be used to designate a guardian for any minor children (children under the age of 18 years old). In order for a will to be valid in Georgia, you need to meet five requirements.

1. The person creating the Will is 14 years or older

Under Georgia law, the testator (person making the Will) needs to be at least 14 years or older to create a will. "Every individual 14 years of age or older may make a will, unless laboring under some legal disability arising either from a want of capacity or a want of perfect liberty of action" [Georgia Code § 53-4-10\(a\)](#).

2. The person creating the Will is competent to create his or her will

For a will to be valid in Georgia, the person creating that will must have *testamentary capacity*. That means the person has a "decided and rational desire to create the will" and dispose of his or her property ([Georgia Code § 53-4-11\(a\)](#)). The testator is also able to "freely and voluntarily" execute the will, meaning he or she is not being influenced or creating the will under misrepresentation or duress ([Georgia Code § 53-4-12](#)).

3. The Will is written

For a will to be valid in Georgia, it must be written – either typed or by hand. ([Georgia Code § 53-4-20](#)). Oral wills, or wills that are recorded by audio or video, are not valid in Georgia. Holographic wills, which are wills that are written but not signed by two witnesses, are not valid in Georgia.

4. The Will is signed by the testator

Under [Georgia Law § 53-4-20](#), the testator must sign his or her will. The signature can be a sign, mark, or any name that is intended to authenticate the document as the testator's will. If the testator is physically unable to sign the will, he or she may ask

someone to sign the will on their behalf. “A will shall be in writing and shall be signed by the testator or by some other individual in the testator’s presence and at the testator’s express direction.”

5. Two witnesses must sign the Will

For the will to be valid in Georgia, it must be properly witnessed – meaning that two competent people who are at least 14 years old must sign the legal document, while in the presence of the testator. ([Georgia Code § 53-4-20\(b\)](#) and § [53-4-22\(a\)](#)).

Holographic wills, which are wills that are written but not signed by two witnesses, are not valid in Georgia. The testator and witnesses sign at the end of the Will.

6. What else should I do to be sure my Will is properly executed and acceptable to the Probate Court?

While a notary is not required in Georgia, having the document notarized can help speed up or simplify the probate process. You should make your will “self-proving” and a notary is needed for that. A self-proving Will speeds up probate because the court can accept the Will without contacting the witnesses who signed it.

To make your will self-proving, you and your witnesses will go to the notary and sign the Will AND an affidavit that proves who you are and that each of you knew you were signing the will. See last page for sample Georgia Self Proving Affidavit, signed by you and your two witnesses (the same two who witnessed the Will) in the presence of a notary.

7. I divorced my spouse but I haven’t done a new Will. In my old Will, I left everything to my spouse. If I die, will my former spouse get everything?

If you and your spouse divorce (or if a court determines that your marriage is not legal), Georgia law revokes any language in your will that leaves property to your spouse. However, if you happen to remarry your ex or if you specifically state in your will that divorce should not affect the provisions in your will, then these rules won’t apply. [Ga. Code Ann. § 53-4-49](#). If you have any concerns about the effects of divorce on your will, see an estate planning attorney for help. NOTE: The safest way to be sure your Will is written and executed properly is to have it prepared and executed by one of our attorneys. If you are unable to reach our office at 706-545-3281 and/or have an emergency need for the Will, this fact sheet and attached affidavit should assist you with using an online program or drafting your own will in compliance with Georgia laws.

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Legal Assistance Office
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Fort Benning, GA 31905

(SAMPLE SELF-PROVING AFFIDAVIT)

STATE OF GEORGIA

COUNTY of _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and all of said individuals being by me duly sworn, _____, testator, declared to me and to the witnesses in my presence that said instrument is the last will and testament or a codicil to the last will and testament of the testator and that the testator had willingly made and executed it as a free act and deed for the purposes expressed therein. The witnesses, each on oath, stated to me in the presence and hearing of the testator that the testator had declared to them that the instrument is the testator's last will and testament or a codicil to the testator's last will and testament and that the testator executed the instrument as such and wished each of them to sign it as a witness; and under oath each witness stated further that the witness had signed the same as witness in the presence of the testator and at the testator's request; that the testator was 14 years of age or over and of sound mind; and that each of the witnesses was then at least 14 years of age.

_____ (signature)
Testator _____ (print)

_____ (signature)
Witness _____ (print)

_____ (signature)
Witness _____ (print)

Sworn to and subscribed before me by _____, testator, and sworn to and subscribed before me by _____ and _____, witnesses, this ____ day of _____, ____.

(SEAL)

(Signed) _____

(Notary Information/Official Capacity of Officer)