

Will Requirements

Testamentary Intent and Capacity

Testamentary Intent: Intend that the will operates to pass property upon death.

Capacity: Pass the “Sound Mind Test”

- a. The nature and extent of his property
- b. The natural objects of his bounty
 - 1) The people he’s related to
- c. Aware of the disposition that he intends to make

Writing

1. Testator must sign
2. Two disinterested witnesses must sign



Witnesses

1. They must witness the signing of or attesting to the will.
2. Line of Sight Test
 - a. Witness has to see the testator sign the will and;
 - b. Occasionally see the other witness sign
3. Conscience Presence Test
 - a. Requires the witness observe the testator signing the will or acknowledgment of testator's agent signing the will
4. Of sufficient age (able to understand what they're witnessing) and mental capacity to witness the will

Interested Witnesses

Common Law:

- a. An interested witness would render the will invalid unless there were two disinterested witnesses and the interested witness was just an extra ancillary witness.
- b. Most states now say it won't invalidate the will but any gift to an interested witness will be purged.

Under UPC:

A gift to an interested witness is valid as long as there's no evidence of undue influence.

Incorporation by Reference

If the will incorporates a second document that describes the items and recipients of personal property, it will be valid if:

- 1) the writing was in existence at the time of the will
- 2) the document was clearly identified
- 3) an intent to incorporate the document

Holographic Wills

Means completely hand written

Are recognized under the Uniform Probate Code and about half of the states.

- Some states require it has to be in the testator's handwriting
- The UPC requires only that material provisions of the will are written by hand.