



## Will Research Guide

### A Legal Research Guide for North Dakota Wills

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in North Dakota state courts.

**The information provided in this research guide isn't a complete statement of the law.** This information is intended as a starting point for your legal research into wills.

This information isn't intended for legal advice and can't replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

**The self-represented individual must make all decisions about how to proceed.**

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references doesn't mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. **Use at your own risk.**

### **No Will Forms Available**

The North Dakota Legal Self Help Center and the North Dakota Court System **don't** have forms or instructions available for Wills.

**If you represent yourself, you create your own legal documents,** or retain a lawyer to create legal documents for you.

**Many public and academic libraries have subscriptions to forms services** available to library patrons. You may want to contact your local public or academic library and ask if they have access to any legal forms services that include Will forms.

If you decide to use a Will form available through a forms service, you'll need to independently determine if the Will form is legally sufficient for North Dakota and suitable for your circumstances.

**Center staff can't tell you if a Will form is legally sufficient for North Dakota or if a Will form is suitable for you.** This requires legal advice, which isn't available from the Center under any circumstances.

**If you're interested in finding a lawyer to prepare your Will,** go to Pages 8 and 9 for all of the lawyer resources available through the ND Legal Self Help Center.

## Definitions of Commonly Used Will Terms

**Bequeath:** To officially arrange for someone to have (something that one owns) after one's death; especially, to give property such as personal property or money.\*

**Bequest:** The act of giving property (usually personal or money) by Will.\*

**Decedent:** A deceased person; the person who died.

**Devisee:** A person who takes the decedent's property through a provision in the Will.

**Executor:** A person named in a Will to carry out the provisions of the Will.

**Heir:** A person entitled to take the decedent's property according to the North Dakota laws of intestate succession.

**Holographic Will:** A Will that has been handwritten by the testator. In North Dakota, a Holographic Will isn't required to be witnessed or notarized.

**Interested Person:** Includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

**Intestate:** Having left no Will at the time of death. North Dakota intestate succession laws determine the decedent's heirs.

**Inter vivos:** A transfer or gift made during one's lifetime, as opposed to a testamentary transfer that takes effect on the death of a giver.

**Issue:** A person's lineal descendants of all generations; includes a person's children, grandchildren, great grandchildren, etc.

**Personal Property:** All property other than real property; includes money, stock, automobiles, household furnishings, etc.

**Personal Representative:** Person or persons appointed by a North Dakota State District Court to settle and distribute the estate of a decedent.

**Real Property:** Land and things attached to the land such as buildings; includes real estate.

**Testate:** Having left a Will at death.\*

**Testamentary:** Provided for or appointed by a Will.\*

**Testator:** Someone who has made a Will.

**Witness:** Someone who sees the Testator sign and execute the will.

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*\*Black's Law Dictionary, 11<sup>th</sup> Edition, 2019*

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## Overview of Wills

### What is a Will?

A Will is a written document executed by an individual in which assets are left to named persons or entities.

### Who can make a Will?

An adult (18 years of age older) who is of sound mind may make a Will.

### How is a Will executed?

[North Dakota Century Code Section 30.1-08-02\(1\)](#) requires that a Will must be:

1. Written;
2. Signed by either:
  - a. The testator (the person making the Will); or
  - b. An individual signing in the testator's name, as long as the signature happens in the testator's conscious presence and at the direction of the testator; and
3. Signed by either:
  - a. At least two individuals, who witnessed the testator sign the Will, or after the testator acknowledged to them that the document is the testator's Will; or
  - b. A notary public, after the testator acknowledged to them that the document is the testator's Will.

### What are the requirements for a Holographic Will?

[North Dakota Century Code Section 30.1-08-02\(2\)](#) requires that a Holographic Will must be hand written by the testator and dated and signed by the testator.

A Holographic Will isn't required to be witnessed, but if the authenticity of a Holographic Will is challenged, individuals who witnessed the testator's signature may testify to its authenticity.

### Who may witness a Will?

Any person generally competent to be a witness may act as a witness to a Will.

### Do I file my Will with the District Court?

**No.** There's no requirement in North Dakota to file your Will with the District Court while you're still alive. The Court will only accept the Will as part of a case to validate your Will, or as part of a probate case after your death.

### **Can I file my Will with a North Dakota County Recorder?**

You may, but you're not required to. If you'd like to have your Will filed, North Dakota law allows you to deposit your Will with a North Dakota County Recorder for safe-keeping.

Once the Will is deposited, and while you're still alive, the deposited Will is only delivered to you (the person who made the Will), or to a person authorized in writing, signed by you.

### **If my Will is filed with a North Dakota County Recorder, what happens when I die?**

After the Recorder is informed of your death, the Recorder notifies any person you designated in writing to receive your Will. The Recorder delivers your Will to the appropriate court on the written request of an interested person.

### **Where should I keep my Will?**

Keep your will in a safe, accessible place.

Be sure the executor (the person in charge of winding up your affairs) you named in your Will knows where it is.

You may want to give your named executor a copy or copies of your Will.

### **Can I keep my Will in my safety deposit box?**

You may keep your Will in your safety deposit box. However, after your death it can be difficult for people to access your safety deposit box.

If you choose to keep your Will in your safety deposit box, you may want to authorize someone else to have access to your safety deposit box.

### **When does a Will become effective?**

A Will becomes effective upon the death of the person who made the Will.

### **Can I ask a North Dakota State District Court to Court to declare my Will valid before I die?**

Yes, North Dakota law allows you, the person who made the Will, to ask a North Dakota State District Court to declare your Will is valid **before** you die.

The Will is filed with the North Dakota State District Court as part of the case.

If the Will isn't sealed by the court, the Will is a public court record.

## Legal Research Resources

### North Dakota Statutes

*(North Dakota statutes are in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is available at [ndlegis.gov/general-information/north-dakota-century-code](https://ndlegis.gov/general-information/north-dakota-century-code).)*

#### North Dakota Century Code Laws Related to Wills

[North Dakota Century Code Title 30.1](#) contains laws enacted by the North Dakota State Legislature related to probate. Title 30.1 includes laws related to Wills. (The North Dakota Century Code is also available in print in many North Dakota public and academic libraries.)

You may find the following Chapters of Title 30.1 of interest, as they relate to Wills:

- [North Dakota Century Code Chapter 30.1-01-06](#): General Definitions. This Chapter includes the definition of an interested person.
- [North Dakota Century Code Chapter 30.1-08](#): Wills. This Chapter includes the basic requirements for Wills.
- [North Dakota Century Code Chapter 30.1-08.1](#): Ante-Mortem Probate of Wills. This Chapter includes the requirements for asking a North Dakota District Court to declare the Will is valid **before** the individual who made the Will dies.
- [North Dakota Century Code Chapter 30.1-09](#): Rules of Construction - Contractual Arrangements Relating to Death. This Chapter includes requirements for the types of provisions an individual can put in their Will.
- [North Dakota Century Code Chapter 30.1-09.1](#): Rules of Construction of Governing Instrument. This Chapter also includes requirements for the types of provisions an individual can put in their Will.
- [North Dakota Century Code Chapter 30.1-10](#): General Provisions. This Chapter includes additional information and requirements related to Wills.
- [North Dakota Century Code Chapter 30.1-11](#): Custody and Deposit of Wills. This Chapter includes requirements for depositing a Will with a recorder.

## **North Dakota Case Law**

*(When the decision of a case is appealed from a North Dakota State District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)*

**Case law is a useful legal research tool for determining what a law means.**

You may research North Dakota Supreme Court case law related to Wills by searching by topic at [ndcourts.gov](http://ndcourts.gov). Click on the “Supreme Court Opinions” link, the “By Topic” link, and then on the link for “Probate-Wills-Trusts.”

You may also search for keywords within North Dakota Supreme Court case law. Go to [ndcourts.gov](http://ndcourts.gov), click on the “Supreme Court Opinions” link and enter the keywords into the “Enter query” text box. Then, click on the “Search” button. North Dakota Supreme Court opinions containing your keywords will be listed on the page.

Another way to research North Dakota Supreme Court case law related to Wills is to use the print version of the North Dakota Century Code. Short summaries of case law are located after each Section of the Century Code. Case law summaries directly follow the text of the Century Code Section. To view the full text of the opinion, go to [ndcourts.gov](http://ndcourts.gov), click on the “Supreme Court Opinions” link and enter the case name or case citation.

## **Laws Constantly Change**

To determine how a law applies to your situation, review the applicable law or laws, court rules, administrative rules and rulings, and case law.

If you need assistance deciding how specific laws, rules or case law apply to your situation, consult a lawyer licensed to practice in North Dakota who has agreed to represent you.

Only a lawyer who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your circumstances.

## **Library Resources (Not all legal resources are available online.)**

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. ([polaris.odinlibrary.org](http://polaris.odinlibrary.org))

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

**Following is a selection of library resources on ODIN that may be of interest to you:**

Encyclopedia of Everyday Law, Shae Irving, J.D. & the editors of NOLO, NOLO 2017.

Estate Planning Basics, Denis Clifford, NOLO 2017.

Finding the Answer to Legal Questions, Virginia M. Tucker and Marc Lampson, Second Edition, 2018.

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

### **Other Legal Research Resources**

How to Research a Legal Problem: A Guide for Non-Lawyers, American Association of Law Libraries. ([aallnet.org](http://aallnet.org))

## **Lawyer Resources & Limited Legal Representation**

If you'd like to learn more about finding a lawyer to represent you, go to [ndcourts.gov/legal-self-help/finding-a-lawyer](http://ndcourts.gov/legal-self-help/finding-a-lawyer).

**Legal Services of North Dakota** is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is [www.legalassist.org](http://www.legalassist.org).

**Dakota Plains Legal Services** is a non-profit legal services organization that provides free legal assistance to low-income individuals, older Americans and veterans. Dakota Plains Legal Services (DPLS) has eight offices and serves communities across South Dakota and North Dakota, including nine tribal nations. DPLS is committed to increasing access to justice with quality legal assistance. Contact information is available on the DPLS webpage of [www.dpls.org](http://www.dpls.org).

**The State Bar Association of North Dakota** provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is [www.sband.org](http://www.sband.org).

**For a list of all lawyers who are licensed to practice in North Dakota**, go to the North Dakota Supreme Court website at [www.ndcourts.gov/Lawyers](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.



## Limited Legal Representation

Lawyer licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled. For example:

- You may want a lawyer to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with a lawyer to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire a lawyer just to make the court appearance for you.

You and the lawyer must agree in writing to Limited Legal Representation.

## North Dakota Free Legal Answers

This civil legal program is a partnership of the American Bar Association and the State Bar Association of North Dakota.

The purpose of the program is to provide free answers to **specific** civil legal question to low-moderate income North Dakotans who submit their questions online. Anonymous volunteer lawyer answer your question, but can't represent you.

Go to <https://nd.freelegalanswers.org/> for information about the program, the online application, and, if you qualify, ask your civil legal question.

Please note that this program **doesn't** provide any assistance with criminal legal questions.