



## 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 the 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 specifically for a Will.

**If you represent yourself, you'll need to create your own legal documents,** or retain a lawyer to do so.

**Many public and academic libraries have subscriptions to forms services,** which are available to library patrons. You may wish 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 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 Page 7 for all of the lawyer resources available through the ND Legal Self Help Center.

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

## 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.

**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*

## 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 or 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 is 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 upon your death.

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

You may, but you're not required to. If you would 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.

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

Keep your will in a safe, accessible place.

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

You may wish 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 may be difficult for people to access your safety deposit box.

If you choose to keep your Will in your safety deposit box, you may wish 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 declare my Will is 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.

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## LEGAL RESEARCH RESOURCES

### NORTH DAKOTA STATUTES

*(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found online at [legis.nd.gov/general-information/north-dakota-century-code](https://legis.nd.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 30.1-08: Wills. This Chapter includes the basic requirements for wills. The Chapter is available at [legis.nd.gov/cencode/t30-1c08.html](https://legis.nd.gov/cencode/t30-1c08.html).
- 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. The Chapter available online at [legis.nd.gov/cencode/t30-1c08-1.html](https://legis.nd.gov/cencode/t30-1c08-1.html).
- 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. The Chapter is available at [legis.nd.gov/cencode/t30-1c09.html](https://legis.nd.gov/cencode/t30-1c09.html).
- 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. The Chapter is available at [legis.nd.gov/cencode/t30-1c09-1.html](https://legis.nd.gov/cencode/t30-1c09-1.html).
- North Dakota Century Code Chapter 30.1-10: General Provisions. This Chapter includes additional information and requirements related to wills. The Chapter is available at [legis.nd.gov/cencode/t30-1c10.html](https://legis.nd.gov/cencode/t30-1c10.html).
- North Dakota Century Code Chapter 30.1-11: Custody and Deposit of Wills. This Chapter includes requirements for depositing a will with a recorder. The Chapter is available at [legis.nd.gov/cencode/t30-1c11.html](https://legis.nd.gov/cencode/t30-1c11.html).

## **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 to locate the short summaries of case law 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 determining whether specific laws, rules or case law apply to your situation, or determining how they 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.

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## **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**

**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).

**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.