Last Wills and Testaments

PC: Rodolfo Quiros

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What is a Will? Do You Need One?

A Last Will and Testament is a formal legal document where you decide exactly how you want your assets distributed upon your death. You can choose family, friends, or charities to receive your assets.

You also decide who will be the person in charge of administering your estate ("Personal Representative") and how final expenses and taxes are paid. You can choose whether the Court will supervise your estate or not. An important aspect for parents is the ability to designate a guardian for their minor or disabled children.

Do you really need a Last Will and Testament? Yes! It is the only way to express your wishes regarding your assets and property, your children's guardian, and your administration preferences. Without a Will, your estate will be distributed according to Indiana law.

PC: Steve Johnson

Do You Need a Will if You Have Little Money?

Perhaps you don't own many items or don't have much money. Do you need a Will? That is a personal choice. But a Will ensures your wishes are carried out.

You may have definite opinions about who gets certain items. For example, you may own something with sentimental value that you want to go to someone specific. You may have a pet that you want taken care of after you pass.

You can also decide where any money that you do have will go. You can name who will be the Personal Representative of your estate. The Personal Representative makes sure that your possessions go to the right person.

Another important feature is naming the guardian for your children. If you die while your children are under 18, then you want to decide who will be the guardian for them. Or if you have a child or spouse who is disabled, you may want to create a trust in your Will to care for them.

Even if you decide not to create a Will right now, you should revisit the issue periodically. Your situation may change. At any time, our attorneys would be happy to assess your needs and create a Will to match them.

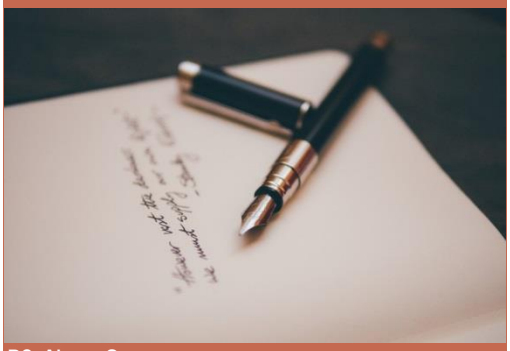
Do You Need a Will and Trust?

You always need a Will but do not always need a Trust. If you have a Trust, you should have a Will along with it. Here's why:

1. Trusts only deal with property that has been transferred to the Trust. If you don't remember or are unable to transfer property to your Trust, then it will not pass under your Trust. A Pour-Over Will prevents this problem. It says any remaining property will "pour over" into your Trust.

2. A Will can accomplish things that a Trust cannot. You can name a guardian for your minor or disabled children.

While it is always beneficial to have a Will, it is not always necessary to have a Trust. You should meet with one of our attorneys to discuss whether or not you need a Trust. If you already have a Trust but do not have a Will, you should meet with one of our attorneys to prepare your Will.



PC: Alvaro Serrano

Choosing Your Personal Representative

The Personal Representative (or Executor) is the person who manages your property after you die. If you die without a Will, the Court appoints someone to administer your estate.

You can decide in your Will who will serve as the Personal Representative of your estate. This person will pay your debts and make sure your assets are disposed of in a legal, efficient, and thoughtful manner.

Choosing someone to serve as your Personal Representative is very important. He needs to understand what is involved in fulfilling that role. He should be someone that you trust and that has integrity.

You should consider your relationship with the individual and choose someone who knows you well enough personally and professionally to know how you would want things handled.

You may want to consider how well this person gets along with your family and how practical he tends to be. You want to choose someone who will be realistic and seek help when he needs it.

You may want to avoid naming a Personal Representative with a conflict of interest because he may decide things that benefit others and harm your family. It might be good to consider his asset management skills with real estate and financial markets.

Choosing a Personal Representative of your estate is a highly personal and important decision. The above considerations can help you make the best decision for you and those you leave after you die.

Choosing a Guardian for Your Children

Determining who will serve as the guardian of your minor child is a huge decision. It is also a great responsibility for whoever agrees to be the guardian.

Appointing a guardian over your child is a legal action. Your child's godparents do not automatically become guardians upon your death. You have to name a guardian in writing in your Will.

You want to choose someone who will care for your family the way you would. However, you also need to choose a person who will follow through on the commitment.

Consider some of the following factors:

Age: Do you want the guardian to be around the same age as you? Is this person emotionally stable and able to care for your child?

Lifestyle: Will it be a healthy and upbuilding environment for your child? Does the person have similar ideals as you?

Marital status: Do you want your child raised by two parents? Is the personality of the guardian more important to you?

Compatibility: How well does your child get along with the guardian? Does your child like and respect this person?

Money skills: How well does this person manage money? Will he use the funds wisely to benefit your child?

Location: Is the person going to move into your home? Does he have a home that is well-suited for children?

It might be a good idea to come up with the priorities you want and a list of people who could potentially be good guardians. You should then approach these people and ask whether they are willing to serve as guardian under the conditions you lay out.

You do not want to name someone without asking because he may refuse. Always discuss your expectations with a potential guardian before naming him in your Will.

It is also a good idea to name an alternate guardian in case the person you initially name is unable to fulfill that responsibility. It may be that your initial guardian dies before you or life circumstances (such as health or a job transfer) render it impossible for him to serve.

When Simple Wills Are Not Enough

You may need a more complex Will if any of the following situations exist:

- You expect to owe estate taxes
- You have a child or spouse with a special need
- You have children from a prior marriage
- You think someone might contest your Will

In any of those cases, you should consult with an attorney to construct your Will.

If your spouse or child has a special need, you may need a special needs trust within your Will. Leaving money to your disabled spouse or child could jeopardize his government-assisted benefits (such as SSI or Medicaid).

However, a special needs trust can help prevent that from happening. Instead of leaving property directly to your disabled spouse or child, the funds go into a trust for his benefit.

The trustee you appoint is in charge of spending money on your loved one's behalf. Because your loved one has no control over the money, government programs will disregard the trust property for eligibility purposes.

The trust usually ends when your loved one dies or all the trust funds have been spent.

PC: Wix

What Makes a Will Legally Valid?

In Indiana, any person of sound mind who is 18 years or older can make a Last Will and Testament. Sound mind means you have an understanding of what you own and who your beneficiaries are.

Every Will must be in writing (except nuncupative, discussed later), signed by the testator, and witnessed by two disinterested witnesses. A disinterested witness means he does not have a personal or beneficial interest under the Will. (A person named as an executor, trustee, or guardian does not make that person an interested party.)

If a testator were unable to sign his own name, he could direct someone to sign it for him in his presence.

If a Will has been properly signed and attested by witnesses, Indiana allows the Will to be made self-proving by use of a self-proving clause within the Will or attached to it. A self-proving clause allows for a smoother administration when the testator dies.

A nuncupative Will is an oral Will that is made by the testator just prior to the time of death. In Indiana, an oral Will can be made by a person in imminent peril of death, whether illness or otherwise, and is only valid if the testator dies as a result of the impending peril.

Also, the nuncupative Will must be declared to before two witnesses, reduced to writing by one of the witnesses within 30 days, and submitted for probate within six months after the death of the testator.

Further, the oral Will is limited to the disposal of personal property and to an aggregate value not more than $1,000. It also cannot revoke an existing written Will.

Have one of our experienced attorneys draw up your Will so you can be sure that it is legally valid and accomplishes what you want at your death.


PC: Daria Shevtsova

Changing Your Will

When you create a Will, it is not a permanent document that you can never change. This is good because our lives change often – we have marriages, divorces, children, grandchildren, births, deaths, etc.

Your Will can be revised, or replaced, if needed. You should never change your Will by writing on it – the changes won't be effective and could even invalidate the Will.

If you need to change just a specific portion of your Will, you may decide to create a codicil to your Will. A codicil is a separate legal document that adds to your existing Will.

At other times, you may have many changes to make to your Will. In this case, it may be best to replace your Will with a new one.

Some people make specific bequests in their Will, meaning that you leave specific property (such as a boat or jewelry) to someone.

However, if the named property is missing from your estate, then it is considered "adeemed." Ademption statutes govern the distribution of your belongings, and the state will take over if items are missing.

It is best to update your Will if you sell, lose, or destroy property named in your Will. If a beneficiary named in your Will dies before you do, this might create a lapse situation depending on the language of your Will.

It is best to specifically state in your Will where the property will go if the beneficiary dies before you, such as to their children or to the residuary estate.

If you have no specific provision for this situation, Indiana provides that any lapsed bequest will go into the residuary estate.

Can You Revoke Your Will?

Can you revoke your Will? Yes, you can revoke your Will by destroying it with the intention of revoking it.

Alternatively, you can put something in writing stating that you intend to revoke your Will. It should contain the date of the Will, your signature, and two witnesses' signatures. If you want to revoke just a portion of your Will, you can only do so by putting it in writing.

In addition, if you create a Will later on and decide to revoke the later Will, the revocation will not automatically revive the former Will.

If you wish to revive your former Will, you must make that intention clear in your revocation of the later Will. Or you can republish your former Will.

A nuncupative Will can be revoked by another nuncupative Will. (A nuncupative Will is an oral Will that a person makes on his death bed).

If you get divorced after making your Will, all provisions in the Will that benefit your former spouse are revoked. Likewise, if your marriage is annulled, it will have the same effect to your Will as a divorce. Other than these two scenarios, there are no other changes in circumstances that can revoke your Will.