



## Wills & Trusts Information

If you have assets - personal property, money, investments, or real property - you probably have definite feelings about who you would like to name as your inheritance beneficiary. You need to draft the proper wills and trusts to carry out your wishes. At **The Law Office of Barbara J. Baird**, I have years of experience helping people understand estate-planning and probate law, and how Indiana and federal laws apply to the distribution of an estate. I have a multi-practice law firm that is committed to staying in your corner.

Contact the Indianapolis probate law attorney's office of Barbara J. Baird. I'll help you understand how the law applies, and how I can help. Together, we'll discern the best wills and trusts tools to use to carry out your wishes for property distribution upon your death, and the best way to minimize federal estate taxes.

### Wills And Trusts - An Overview

What if you die before you get around to preparing your will? You wanted to be an organ donor, but you never told anyone. You wanted to be cremated and have your ashes scattered at sea, but no one knows. You assumed your children would be taken care of with the money from your insurance policy but much of that money is eaten up by estate taxes. You wanted to provide for your sister who is struggling financially and you wanted your wedding ring to go to your daughter. Instead, your sister inherits nothing and your ring is sold at an estate sale and the profits are divided between your children.

No one likes to contemplate death or the possibility of years of illness or disability. The thoughtful creation of estate planning documents while you can effectively express your desires regarding the distribution of assets, care of minor children, and health care wishes is the best way to control your future. It is important to draft these documents with the assistance of a knowledgeable attorney. These documents provide you control over end-of-life situations and determine how and to whom your assets will pass.

### **Wills & Trusts: The Backbone Of A Plan For The Future**

A will is a written or oral communication by a person stating how they want their property disposed of at death. A trust is a legal arrangement that allows one person to hold a legal interest or right for the benefit of another person. Wills, trusts and other estate planning documents are generally known in the law as estate planning instruments.

Wills and trusts, etc. are not just for the wealthy.

These documents are important for anyone who wants to look after themselves, their children, and their property. Many different kinds of wills and trusts are available. An experienced wills and trusts attorney can help you create the specific combination of estate planning documents that are best for you and your family. These documents provide necessary guidance for many significant decisions including the following:

- Decision-making should illness or disability incapacitate you
- The payment of various state and federal taxes
- Distribution of your assets to the people or entities you choose
- Guardianship and providing for minor children

The actual wills and trust instruments you choose will depend upon the specific circumstances of your unique life situation.

## What Wills Do

A written will is the cornerstone of most estate plans. A written will, prepared by an experienced attorney, allows you to:

- Select the person responsible for carrying out the wishes you set forth in the will.
  - This individual is known as the executor or personal representative
- Direct the payment of debts and taxes
- Make specific bequests or gifts of tangible property like family heirlooms or sentimental items. It is useful to include the language, "If owned by me at the time of my death" in case the item has been sold or lost, in your estate planning document
- Control the distribution of the remainder (residue) of your other property
- Name a guardian or guardians for your minor children and their property
- Specify your preferred burial arrangements

A court will consider a document to be a valid will if, looking only at the document itself, it finds that it was intended to be the final expression of the person's wishes. Additionally, the person creating the will must be of "sound mind." While each state varies in its specific requirements, sound mind is usually established in court by showing that the person making the will:

- Was legally old enough to understand what they were doing, usually 18 years old
- Knew what assets they owned
- Directed the disposition of those assets to people or institutions generally expected to receive them
- Understood that, by signing it, the will made a final disposition of property. This requirement generally only requires that the person understand the will and its contents at the time of signing. Thus, a person who is failing mentally but still has "good" days can make a will during a lucid periods as

long as the person understands what they are signing.

Usually, a letter stating one's desires or a list of property is not a valid will. There are many types of wills, including holographic wills, video wills, and self-proving wills, and each has its own requirements in order to make it valid. While each state law varies, a will must generally have witnesses in order to be valid.

### **What Trusts Do**

A trust is a legal property interest held by one person for the benefit of another. The person who holds the legal property interest is called the trustee. The person for whom the property is being held is called the beneficiary. The person establishing the trust is called the grantor. A trust can be revocable or irrevocable. Revocable trusts may be changed or terminated by the grantor at any time and for any reason. An irrevocable trust, once established, cannot be terminated or altered for any reason. A trust designed to go into effect upon your death is called a testamentary trust. However, experienced estate planning attorneys often use living trusts, created while you are still alive, as a way to avoid probate and its associated costs.

Trusts allow the trustee to direct or control the property or other legal rights that are in the trust. Trustees have a legal duty to make decisions regarding the trust property in the best interests of the beneficiary. In addition to true legal trusts, other trust-like instruments you may use to involve others in the execution of your wishes include the following:

**Power of Attorney:** A power of attorney gives someone you trust the ability to make decisions for you, when you are incapacitated. That person does not have to be an attorney although he/she will be known as your "attorney in fact." A power of attorney used to address broad issues such as medical care decision is called a Health Care Power of Attorney. A power of attorney can also address narrow issues and simple decisions including

the purchase of a single parcel of real estate.

**Health Care Directive and Living Wills:** In a health care directive you make the decisions regarding your medical care for all situations should you become incapacitated. A living will is a narrower form of a health care directive, generally limited to situations in which death is imminent. Every state recognizes a patient's right to make fundamental choices about the care and treatment he/she receives at or near the end of life. Health care providers must generally honor the terms of living wills and advanced medical directives.

Wills, trusts and other estate planning instruments allow you to take control of your future. Through the careful selection and creation of various estate planning documents you can choose how your own disability and death will be managed and you determine how your assets and the people you care for most will be treated when you are gone. The advice and assistance of an experienced Wills and Trusts attorney is essential to making sure that the measures you choose comply with your state's law and truly carry out your wishes.