



# **Do I Need a Will or Trust?**



## ***What is a Last Will and Testament?***

A Last Will and Testament is a document that controls how your property is distributed when you die. You may also use your will to name a guardian to care for your children after your death. A properly drafted will can save your grieving family unnecessary time, effort, expense and unpleasant surprises.

## ***Do I need a will?***

If you die without a will, your property will be distributed according to your state's law. This usually means that your property will go to your spouse or children or, if you are not married or do not have children, to your parents or siblings. If you wish to dispose of your property in specific ways, or if you have minor children, you should have a will.

## ***What should a will include?***

Your will should name an "executor" or "personal representative" and an alternate. This is the person who will carry out your wishes in the will. Choose carefully and discuss the matter with whomever you choose.

Your will also designates the "beneficiaries", the people who get your stuff. For the most part, you can dispose of your property however you wish, but you should always name alternates in case the primary beneficiary dies before you do. Be aware that your debts must be paid before anything is distributed to your beneficiaries.

If you have minor children, your will should also designate their guardian and a method for managing the property. A court may name a guardian if you fail to name one. The guardian should be the same in both parents' wills (if it is not, and both parents die at the same or about the same time, the court decides).

## ***Is There Anything That a Will Can Not Do?***

Some states will not permit you to disinherit a spouse in a will. You generally cannot leave property an animal (it may be possible to set up a trust for the animal). Jointly owned property, such as a bank account, cars, or real estate held in both your names, may pass automatically to the surviving owner and not through a will. Likewise with the proceeds from contracts that name beneficiaries, such as life insurance/SGLI and IRAs.

## ***How long is a will good for?***

A valid will generally remains valid until you change or revoke it. You may change or revoke your will whenever you like. Changes to a will are usually made by drafting a new one and destroying the old one. There are additional ways to change your will, but do not make any changes to your will before first consulting with an attorney. There are many technical requirements that must be met in order to make such changes legally valid. Any writing on the face of your will may destroy its legal validity.

## ***What is a Testamentary Trust?***

It is a written legal agreement between the individual creating it and the person or institution who is named to manage the trust's assets. The individual who creates a trust is called the trustor, grantor, or creator. The trustee, or person who manages the assets, holds legal title to the assets for the benefit of one or more trust beneficiaries.

***Why should I use a testamentary trust in my estate plan?***

Trusts are used for many purposes, including:

- a. Managing assets.
- b. Providing privacy. The assets, terms, and conditions of a trust are generally not subject to public inspection.
- c. Providing for multiple beneficiaries. A trust can benefit more than one beneficiary.

***Where can I establish a testamentary trust?***

In a will. The written instructions listing the terms of the trust are contained in the will. This trust lies dormant until you die and your will is probated.

***Who are the trust beneficiaries?***

The beneficiaries are those you intend to enjoy the trust property. If you name alternate beneficiaries, the governing document establishes the conditions under which the beneficiaries will the proceeds. When the beneficiaries are minors, the trust may provide for continued management of the assets until a certain age.

***What is the normal duration of a testamentary trust?***

Testamentary trusts have definite beginning and ending dates. Testamentary trusts begin on the date of death of the trust creator. In many trusts, the ending date is when the youngest beneficiary reaches a specific age.

***Who should I consider naming as a trustee?***

Because trustees have certain fiduciary duties, consider someone who, understandably, you “trust.” Consider that person’s age, expertise, ability to serve, and knowledge for the beneficiary’s needs. Sometimes people wish to appoint a corporate trustee such as a bank or other financial institution to manage a trust. However, a corporate trustee will frequently require an estate to have over \$500,000 in investable assets before agreeing to serve as trustee and often their fees can be quite high with a minimum fee of \$3,000/year to administer the trust. It is best to check with the trust department of the bank/financial institution you wish to manage the trust as to their policies before naming them as your trustee in your will.

***How do I make a will or trust?***

You can call the Legal Assistance Office to schedule an appointment. Make sure you know your state of residence. Often, it is your home of record. If you are not sure of your state of residence, your attorney can help you determine your legal state of residence.

If you already have a will, bring it with you to the appointment. It will assist the attorney in understanding your current arrangements and the changes you desire. You should also know the names of the persons to whom you wish to give property, as well as the alternates. Also, be prepared to provide the full names of the primary and alternate individuals who will act as your executor, guardian of your children and manager of your children’s property. Also bring information for the person or institution that you will appoint as trustee.

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