

## **WHAT IS A WILL?**

A will is a document in which a person tells how his or her property should be given away upon death.

## **WHAT HAPPENS TO MY PROPERTY IF I DIE WITHOUT A WILL?**

If you die without a will, Indiana law will say how your property is given away. Below are some examples of how your property will be given away if you die without a will. The following list only provides general rules. There may be exceptions.

Unmarried with no children. If you are not married and have no children, your living parents, brothers, sisters, nephews and nieces will divide your property.

Unmarried with children. If you are not married and have children, your children and/or grandchildren will divide your property.

Married with no children. If you are married, have no children and have no living parents, your husband or wife will receive all of your property. However, if at least one of your parents is alive when you die, your husband or wife will receive three-fourths (3/4) of your property and your parent(s) will share one-fourth (1/4) of your property.

Married with children from the marriage. If you are married and have children, your husband or wife will receive one-half (1/2) of your property. Your children will receive shares of the remaining one-half (1/2) of your property.

## **DO I NEED A WILL?**

If you own property and do not want Indiana law to determine how your property is divided

among your family, you should have a will. If you want to give property to someone other than a family member after you die, you should also have a will. However, if you do not own any property or do not care how your property is given away after you die, you may not need a will.

## **WHO CAN WRITE A WILL?**

Any person who is of sound mind and at least eighteen (18) years old can write a will. The person must freely and voluntarily make the will, and not be under any pressure to make the will.

## **DOES A WILL HAVE TO BE WRITTEN?**

Wills must be in writing before a person dies to be legally valid. In some cases, a person who is about to die may make a valid unwritten will that gives personal property (not land) of less than one thousand (\$1,000) dollars.

## **DOES THE WILL NEED TO BE WITNESSED?**

You must sign the will in the presence of two witnesses, and the witnesses must also sign the will.

## **HOW CAN I CHANGE OR REVOKE MY WILL?**

A will can be revoked if you destroy your will with the purpose of canceling it. You can also revoke an old will by making a new will. A divorce automatically revokes any portions of a will that relate to your ex-spouse. Any changes to a will must be in writing and follow the rules that make a will legally valid.

## **WHAT IS A TRUST?**

A trust is created when a person (called a settlor) transfers property to another (called a trustee) to

be kept by the trustee for the benefit of a third person (called a beneficiary). For example, when a parent wants a child to receive property at age 25, they may give that property to a trustee. The trustee then holds and protects the property until the child turns 25. While there are many different types of trusts, the most common is the living trust. This is a trust created during a person's life, rather than one created in a will.

## **WHO CAN DO A TRUST?**

In order to establish a trust, Indiana law requires that a person be over the age of 18 and be of sound mind. A person must describe the trust in writing. The trust document must state what the person wants to include in the trust, who the trustee will be, who will be named as beneficiaries, what the beneficiaries are to receive under the trust and in what manner, and that the trust is being established for a lawful purpose.

## **WHAT ARE THE DIFFERENCES BETWEEN A WILL AND A TRUST?**

1. A trust generally allows property to be distributed quickly and privately because property placed in a trust does not go through the court procedure known as probate. (Probate is the court-supervised process that distributes a person's property after they die). Probate generally takes longer and costs more than transferring property through a trust.
2. A will is a matter of public record while a trust is not. The use of a trust thus allows for the private distribution of property. When property is distributed under a will, anyone to whom a person owes money or property will be notified of their opportunity to claim it

3. Trusts are more flexible and easier to manage than wills, so property can be put into or taken out of a trust without having to create a new one. Also, beneficiaries to a trust may be added or removed without the formal procedures required under wills.
  
4. The use of a trust allows a person to keep irresponsible or immature beneficiaries over the age of 18 from inheriting property outright, as they would under a will, by extending the age at which a beneficiary is to receive property. For beneficiaries under the age of 18, a trust allows the settlor, rather than the court, to decide who should look after a child's inheritance until the child becomes an adult.
  
5. A trust allows property to be distributed a little at a time so that it is protected from beneficiaries who are not good at managing their money, and from their creditors.

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# TRUSTS & WILLS

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**Indiana Legal Services, Inc.**

## SHOULD I HAVE A TRUST INSTEAD OF A WILL?

A trust usually should not be used in place of a will. If a person dies without a will, any property not included in a trust will be distributed by the state. In order to avoid this situation, people with a trust should also have a will, so that any property not included in the trust will be distributed how they want it to be distributed.

## DO I NEED A LAWYER TO DO A WILL OR A TRUST?

It is best to have a lawyer to do a will, although you may be able to do a very simple will yourself. Trusts are complicated. You should consult a lawyer if you think you might need a trust.

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[www.indianajustice.org](http://www.indianajustice.org)