



Questions and Answers About Wills and Trusts For Individuals With Disabilities and Their Families

1. What is a will?

A will is a legal document by which a person makes a distribution of his or her property to take effect after his or her death. A will may be modified or revoked during the lifetime of its maker.

2. Why have a will?

A will is necessary to insure that your choices of estate administrator (executor or executrix), beneficiaries, and guardians for minor children are honored after your death. In many cases, careful preparation of a will can lessen death taxes. If your family includes a person with disabilities, or an individual who may require long-term skilled care, the use of a Special Needs Trust should be seriously considered.

3. What is a trust?

A trust involves the transfer of property from one person (called a settlor) to the control of another person (called a trustee) to be held and used for the benefit of a third person (called a beneficiary).

4. Why have a trust?

Many estate plans do not require a trust. However, trusts are often essential to insure the proper management of property left to individuals who are minors, disabled or irresponsible. Trusts such as a Credit Shelter Trust or an Irrevocable Life Insurance Trust can also be essential in order to reduce significant death taxes in larger estates.

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5. What is a discretionary trust?

A discretionary trust is a trust created either during the lifetime of the settlor, or in a deceased person's will, for the benefit of one or more persons, with the trustee retaining full discretion to determine the level of assets to be provided to the beneficiaries of the trust.

Under current Pennsylvania law, a properly drafted discretionary trust known as a Special Needs Trust can make assets available for a person with disabilities without disqualifying that person from important governmental programs.

6. What is a living trust?

A living trust is a trust created by an individual during his/her lifetime where the settlor of the trust manages the trust and retains the right to revoke the trust during his/her lifetime; at the death of the settlor, the assets of the trust pass outside of the settlor's will to the persons designated in the trust. The use of living trusts does not typically save death taxes unless it is created as an irrevocable trust.

7. What is a living will?

A living will is a set of medical directives, made by a person while competent, to health care professionals, to be used in the event that the person should become incapacitated and in 1) a terminal condition, or 2) a state of permanent unconsciousness.

8. What is a power of attorney?

A power of attorney is a written document signed by a competent individual which authorizes another to act as the individual's agent, typically in financial and/or medical matters. If it is drafted as a "durable" power of attorney, the authority to act by the holder of the power survives the incapacity of the maker.

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9. What is a guardian?

A guardian is a person appointed by a court to make financial and personal decisions for an adult incapacitated person. In 1992, Pennsylvania enacted a limited guardianship plan which allows a court to find a person totally or partially incapacitated, and to appoint either a plenary (full) or limited guardian. The appointment of a family member or any other person as guardian does not increase the financial responsibility of the guardian to support the disabled person.

10. What information should I gather before I contact an attorney to prepare a will?

1. The distribution which you desire for your assets.
2. Executor and Alternate Executor—individuals you would trust to manage the affairs of your estate after you pass.
3. Guardians of minor children—individuals you would trust to care for your children until they reach the age of majority.
4. An approximate idea of your net worth including life insurance—if your net estate – including life insurance – is over two million dollars, tax planning may be necessary and can save very substantial death taxes.
5. Where a family member has a disability, the nature of the disability and the long-term prognosis for that person.

If you would like to receive an electronic copy or more information regarding this list of frequently asked questions, please visit our website at <http://www.mcandrewslaw.com/> or call (610) 648-9300.

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