

HARRELL LAW

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FREQUENTLY ASKED QUESTIONS

About WILLS & TRUSTS & MORE

WHAT IS ESTATE PLANNING?

An estate is the sum of a person's assets – their legal rights, interests, and entitlements to property of any kind – less any liabilities owed. Put another way, it's what you own minus what you owe.

Careful legal planning can ensure that your financial goals are met and that your family is taken care of after you pass away. A comprehensive estate plan combines several elements, including a will, a power of attorney, and a living will declaration with a health care representative designation. For some, a trust may also make sense.

Where Do I Start?

Taking inventory of your assets is a good place to start your estate planning. Your assets include your investments, retirement savings, insurance policies, and real estate or business interests.

Ask yourself these questions:

- 1) Whom do you want to inherit your assets?
- 2) Whom do you want handling your finances if you are unable to handle them yourself?
- 3) Whom do you want making medical decisions for you if you become unable to make them for yourself?

Frequently Asked Questions about Wills

What Happens If You Die Without A Will?

If you die without a will in Indiana, then your assets will be distributed according to Indiana law in place at the time of your death. Dying without a will — also known as dying “intestate” — can be costly to your heirs and leaves you no say over who gets your assets. The current Indiana statute, Indiana Code 29-1-2, provides for the distribution of your estate if you die without a will.

What Does A Will Do?

A will designates which beneficiaries are to inherit your probate assets. A will names your Executor, the person you chose to administer your estate and be responsible for distributing those assets to your beneficiaries. A will names your Guardians for your children. A will only controls probate assets, which are property that passes under the decedent’s will or by intestate succession.

Should I Tell My Beneficiaries About My Estate Plan?

Discussing your estate plans with your beneficiaries or heirs may prevent disputes or confusion. Inheritance can be a loaded issue. By being clear about your intentions, you help dispel potential conflicts after you’re gone.

Questions Regarding Estate and Inheritance Taxes

Will My Estate Be Subject To The Federal Estate Tax (the “Death Tax”)?

In 2026, the estate and gift tax exemption raises to \$15,000,000 per individual. That means an individual can leave \$15 million to heirs and pay no federal estate or gift tax, while a married couple will be able to shield twice that amount.

Will My Estate Be Subject To The Indiana Inheritance Tax?

Indiana has repealed the state-level inheritance tax.

What can I do during my lifetime to give gifts tax-free and reduce my estate?

You may give up to \$19,000 a year to an individual in 2025 (or \$38,000 if you're married and giving the gift with your spouse). You may also pay an unlimited amount of medical and education bills for someone if you pay the expenses directly to the institutions where they were incurred. Please sure to talk to your accountant or financial adviser for more information about these options.

Questions Regarding Trusts

Are Trusts Just For The Very Wealthy?

Trusts are legal mechanisms that let you put conditions on how and when your assets will be distributed upon your death. They allow you to distribute assets to your heirs without the cost, time, and public nature of probate court, which administers wills. Setting up a trust during your lifetime can spare your family members the burden of court proceedings after you are gone. Some trusts also offer greater protection of your assets from creditors and lawsuits.

Many young parents with limited assets choose to create trusts either during life or in their wills for the benefit of their children in case both parents die before all their children have reached an age deemed by them to indicate sufficient maturity to handle property. This permits the trust estate to be held as a single undivided fund to be used for the support and education of minor children according to their respective needs, with eventual division of the trust among the children when they reach a specified age or ages.

What is a Revocable Living Trust?

A Revocable Living Trust is an arrangement by which you transfer ownership of your property into a trust throughout the course of your lifetime and you specify how those assets are to be distributed upon your death. Unlike a will, which comes into play only after you die, the living trust can start benefiting you while you are still alive. The trust is revocable in nature, which allows you to make changes to fit your personal situation.

The four main components of a Trust are:

- 1) Grantor or Settlor – the creator of the trust
- 2) Trustee – the person or entity that distributes and manages the trust property according to the trust documents
- 3) Trust Assets – property transferred into the trust
- 4) Beneficiaries – those who receive the benefits of the trust

There are many advantages to using a Trust, including:

- Saving time and money in settling the estate
- Avoiding legal guardianship in case of disability
- Avoiding having personal and financial matters made public
- Reducing the chance of a “will contest”
- Keeping control in the family and out of the court system

Questions Regarding Power-of-Attorney

What is a Power of Attorney (POA)?

A power-of-attorney (POA) is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. A power-of-attorney is a necessary part of a comprehensive estate plan in order to eliminate the need for guardianship actions in court and to provide for someone to have legal authority with regard to financial decisions on your behalf if you are unable to make these decisions.

The person named in a power of attorney to act on your behalf is commonly referred to as your "agent" or "attorney-in-fact." The person granting power to that attorney-in-fact is referred to as the "grantor". With a valid power of attorney, your agent can take any action permitted in the document. Often your agent must present the actual document to invoke the power.

What Is A Durable POA?

A Durable Power of Attorney is one that continues to be valid even if the grantor is incapacitated.

What Is A Limited Power of Attorney?

A Limited Power of Attorney can be helpful in some very specific circumstances and, as the name implies, can be individually tailored to your needs.

Are There Any Specific Qualifications Necessary for Someone To Act As An Attorney-In-Fact?

No, except that the person must not be a minor or otherwise incapacitated. The best choice is someone you trust.

Questions Regarding Living Wills

What is a Living Will?

As we grow older, we may find ourselves in a position where decisions need to be made as to how we wish to be treated in a variety of medical situations at the end of our lives. Further, sometimes we find ourselves in a condition where we can no longer express our preferences. A Living Will allows us to deal with these situations. In Indiana, you may name an individual as your designated Health Care Representative to make decisions on your behalf.

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