



MASER | AMUNDSON | BOGGIO | HENDRICKS P.A.

Your rock in a hard place

# Frequently Asked Questions

## Wills

### **What is a Will?**

A Will is a legal document that states your final wishes as to what should be done with your property when you die and who should be responsible for gathering your assets, paying your debts and expenses and making distributions to your beneficiaries.

### **Do I need a Will?**

Maybe. You need a Will to leave specific tangible items to specific people after your death. You need a Will if you want to leave property to someone who is not your spouse or descendant. If you want to leave someone out (disinherit) who would otherwise inherit your property you need a Will. A Will is also required to make unequal distributions and to name a guardian for minor children.

### **What if I die without a Will?**

If you die without a Will, it means you have died **intestate** and the intestacy laws of the state of Minnesota determines how your property is divided and distributed.

### **How do I make sure my Will is followed?**

If you pass away with real property in just your name and/or more than \$75,000 without a named beneficiary then your estate must go through Probate. Through the Probate process your nominated Personal Representative is appointed by the Probate Court and given the power and responsibility to administer your estate in accordance with state law and the terms of your Will.

### **What is Probate Court?**

Probate Court is a specific court within each county that handles the estate administrations of a decedent, and related cases. The Personal Representative of your estate must report to the judge how the decedent's funds were used to pay any debts and expenses and how the remaining assets are distributed to the beneficiaries named in the decedent's Will. The Probate Court is also where any contests or disputes would be resolved.

### **Will my Personal Representative take care of things if I become incapacitated?**

No. Your Will only takes effect after you die. Your Personal Representative does not have power to manage your affairs during your lifetime. Powers to act on your behalf, during your lifetime, must be granted through a financial Power of Attorney and/or medical Health Care Directive. However, you can name the same person to serve in each document.

## Trusts

### **What is a trust?**

A Trust is a fiduciary arrangement where property is given by a person, the **Grantor**, to be held or managed by a person or entity, the **Trustee**, for the benefit of another person or entity, the **beneficiary**. Trusts can be revocable (amendable during your lifetime) or irrevocable.

### **Do I need a Trust?**

Maybe. A Trust can be a useful estate planning tool for some people based on how their assets are held, who they name as their beneficiaries, and what their goals are for how the assets should be distributed after death. Not everyone needs a Trust.

### **Can I be in charge of my own Trust?**

Yes. You can be the Grantor and initial Trustee of your own Trust. One benefit of a Trust is naming successor Trustees who can take over during your lifetime in the event of incapacity.

### **Does a Trust avoid Estate Taxes?**

No. The assets in a revocable trust are considered part of your estate. If your total estate exceeds the federal estate tax exemption of \$11,200,000 or the Minnesota estate tax exemption of \$2,400,000 for 2018 then estate taxes will be owed.

### **If I have a Trust do I need a Will?**

Yes. We recommend that you have what is called a pour over Will that directs assets be distributed according to your Trust in the event any assets are left out of the Trust.

### **With a Trust I can avoid Probate, right?**

Typically yes. As long as all of the necessary assets have been titled into the name of the Trust. Any real property or non-beneficiary designated assets over \$75,000 left outside of the Trust may require a probate.

### **So I should put all of my assets into my Trust?**

Not necessarily. Some retirement accounts and other qualified assets should not be titled into your Trust because they need to be held by an individual and to avoid negative tax implications. It is important to discuss what assets need to be transferred into your Trust with an attorney.

### **Can I use a Trust to protect assets from the nursing home?**

Typically no. Assets in most Trusts are available to pay for medical care costs for you or your spouse. Assets within a Trust need to be disclosed and most are considered available assets when applying for Medical Assistance.

**6601 Lyndale Avenue South, Suite 320  
Richfield, MN 55423  
952-925-4147  
[www.maserlaw.com](http://www.maserlaw.com)**



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## Power of Attorney

### **What is a Power of Attorney?**

A Power of Attorney is a legal document that allows you, the Principal, to appoint a person (or organization), as your attorney-in-fact to access and manage your assets. The attorney-in-fact does not have to be a lawyer. The actions of the attorney-in-fact are binding on the Principal so it is important to name someone that you trust deeply.

### **What is a Durable Power of Attorney?**

A durable power of attorney is a power of attorney that continues in the event of the Principal's incapacity. Unless a power of attorney specifically states that it is a durable or continues in the event of incapacity a power of attorney ceases to be effective if you become incapacitated.

### **How does the Power of Attorney work?**

The attorney-in-fact, with an original executed Power of Attorney document, "steps into the shoes" of the Principal and can immediately make transactions as if the attorney-in-fact is the Principal. To act for the Principal the attorney-in-fact signs his or her name, as attorney-in-fact for *name of Principal*. Example: Jane Smith, as attorney-in-fact for John Doe.

### **Who should I name as my attorney-in-fact?**

Your attorney-in-fact must be at least 18 years of age and mentally competent. The power of attorney is effective when you sign it and gives your attorney-in-fact access to your finances. One of the jobs of the attorney-in-fact is to maintain accountings or records of all the transactions they handle for you. A family member or friend who has difficulty managing their own asset would not be a good choice to name as your attorney-in-fact.

### **Who watches over my attorney-in-fact?**

No one. Unless you require your attorney-in-fact to give regular accountings to another person or organization no one watches over the actions of your attorney-in-fact to make sure they are handling your affairs properly.

### **Can I change my mind on who I name as my attorney-in-fact?**

Yes. As long as you have capacity you can revoke (take back) the powers given at any time. The revocation must be in writing and delivered to the named attorney-in-fact and any institutions where the attorney-in-fact used the Power of Attorney.

## **Health Care Directive**

### **What is a Health Care Directive?**

A Health Care Directive is a legal document naming someone, your Health Care Agent, to make medical decisions for you in the event you are unable to communicate your wishes. You can also leave instructions as to what medical treatment you do or do not wish to have administered.

### **What powers will my Health Care Agent have?**

Your Health Care Agent will have the power to:

- consent to, refuse, or withdraw medical treatment,
- start or stop care,
- choose health care providers,
- review your medical records, and
- decide where you will live/receive care.

### **Who should I name as my Health Care Agent?**

Your Health Care Agent must be at least 18 years old and mentally competent. Your Health Care Agent should be someone who knows you well, will follow your expressed wishes, and someone you trust to act in your best interest. Your doctor, nurse, or other medical provider cannot serve as your Health Care Agent unless they are related to you by blood or marriage.

### **When can the Health Care Agent take over decisions?**

Your Health Care Agent can make medical decisions for you when you are unable to communicate your medical wishes or when your physician determines you do not have capacity to make decisions for yourself.

### **Can I change my mind about my Health Care Agent?**

Yes. You can cancel all or part of the Directive by destroying the document, making a written statement you are cancelling the Directive, or by making a new Health Care Directive and distributing the new Health Care Directive to your Health Care Agent and medical providers.

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