



Trellis Legal, LLC

5149 Butler St., Suite 300, Pittsburgh, PA 15201

www.Trellispgh.com

Plain and Simple: Legal Considerations and Language for Wills and Estates

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Everyone has an estate. Whether it includes a home, a car, a record collection, or your savings accounts, it is helpful to have a will that clearly designates how and to whom your property will be distributed when you pass away. There are many ways to divide and distribute your estate and small differences in language can have a big impact. Below is a brief overview of PA laws and common types of estate transfers and some commonly used terms. Working with a wills and estate attorney can make sure you have the right documents!

- **Estate:** An estate, for legal purposes, is the total property, real property (like houses and land) and personal property (cash, accounts, cars, other items you might care about (and even those that you don't), owned by an individual. Their estate rights include the current and future rights to the property, as well as, the rights to use, transfer, destroy, or sell the property. [PA Title 20](#).
- **Devise v. Bequeath:** The difference in this language specifies if you are transferring real or personal property. "Devise" is used for real property, such as land or a house. "Bequeath" is used for personal property, such as cars, jewelry, or other movable property.
- **Why You Want To Have A Will:** A will is a document that describes how and to whom you would like your property to be distributed after your death. A will makes the process smoother and less stressful for everyone by clearly describing what assets should be distributed to whom. It can also give you peace of mind over who will manage your affairs (your executor), who will take care of your children or pets, and/or how your funeral will be handled.
- **Wills v. Deeds:** While the will designates the transfer of property *after* death, deeds are used to transfer property *during* life, as well as passing by operation of law when held in a joint tenancy or tenancy by the entirety. Wills allow for specific division of property among any number of parties. Wills do not have any legal effect until death, and may be changed or revoked at any time before then. Any part of the estate not specified in a will will be distributed through the PA Intestate Succession, described below.
- **Intestate Succession:** When an individual dies without a will, or if their will does not include their entire estate, any remainder of the estate passes through intestate succession, or the default rules set by law (You

can find them at [PA Title 20 Chapter 21](#)). A few examples of the Intestate default rules include: If there is a surviving spouse but no surviving parents then the entirety of the estate passes to a surviving spouse; If there are surviving parent(s) then the first \$30,000 and one half of the estate goes to the parent(s) with the remainder going to the surviving spouse; If there is a surviving spouse and children, ½ goes to the surviving spouse and the other ½ is divided among all children; If there is no surviving spouse the line of succession goes to (in order) children, parents, siblings, grandparents, aunt/uncles, cousins, grandchildren, and as a last resort the Commonwealth of Pennsylvania. If any of these “defaults” are not how you’d choose for your estate, it’s important to work with an attorney to set up a will.

- **The Difference Between Wills and Trusts:** A trust is a more complex legal structure than a will and usually requires a formal set up process. It can be used to distribute assets and administer funds while alive or after death, whereas wills only go into effect once deceased. Creating a trust can help reduce the amount of taxes paid when transferring assets, but does not eliminate them completely. Trusts can also be set up to go into effect if something happens to you, like you become incapacitated, whereas a will only goes into effect once you are deceased.
 - **Testamentary Trust:** This is a provision in a will to take effect once the person providing the trust is deceased that creates a transfer of assets to a specific beneficiary at a later date and it names a trustee to manage the assets in the meantime. For example, you may want a testamentary trust if you have children, and want to identify how and when your estate passes to your child, and what it is used for. Or, if you have a beneficiary you know isn’t going to be the most responsible with money, a testamentary trust can help allocate the proceeds over time or be managed by the trustee so it’s not “all spent in one place”. Once complete, the trust is managed by the designated trustee until a predetermined time or event where it is transferred to the beneficiaries. Often the triggering event is when the beneficiary reaches a certain age or reaches a milestone in life.
 - **A Supplemental Needs Trust (SNT):** This is a trust that can be set up to preserve and honor certain benefits, such as needs-based government benefits like social security. Also sometimes called a ‘special needs trust’ this can allow a disabled or ill person to receive income without getting in the way of their eligibility for public assistance and needs-based government programs. The beneficiary of a SNT must have a disability recognized by [section 1614\(a\)\(3\) of the Social Security Act](#). Once in place the funds from the SNT can be accessed to supplement the needs of the beneficiary. For example dental care, vision care, or a home companion which are not covered by Medicaid.
- **General Power of Attorney vs Healthcare Power of Attorney:** Granting someone general power of attorney gives them the right to manage finances, assets, and taxes on your behalf. This can go into effect if you become incapacitated or after your death. The healthcare power of attorney gives someone the authority to make medical decisions on your behalf if you become mentally or physically incapacitated. The healthcare power of attorney is commonly accompanied by a healthcare directive, indicating the types of care you would like to receive or not in the event you cannot make medical decisions on your own behalf. You can choose to have the same person for both of these roles or divide them between multiple people. Either way, the person you choose should acknowledge in writing that they agree to step into this role.

- **Types of Estate Transfers:** There are infinite ways that an estate can be divided. You can divide it between multiple parties, at different points in time, and with almost any condition. The most basic transfer gives all rights to the transferee forever, which allows them to use it and transfer it freely to others. Alternatively, you can transfer an estate to someone for a set number of years, for the entirety of their life, or for the entirety of someone else's life. You also have the option of placing a condition(s) on the estate where the transferee loses their rights to the estate if they violate the condition(s). Small changes in language can have huge effects on the legal outcomes of a transfer, so we recommend talking to a legal professional about what your desired outcomes are and they can help draft language to reflect those wishes.