

# MONONA PUBLIC LIBRARY

## WILLS AND TRUSTS

A primer on how and why people utilize them for  
estate planning

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# MPL ESTATE PLANNING SERIES

- September 27, 2021 : Powers of Attorney

What are they, do you need them (yes), and how they work

- October 25, 2021 : Wills and Trusts

A primer on how and why people utilize them for estate planning (ever wonder what happens to pets when someone passes away without making arrangements for their care?)

- November 22, 2021: Probate and Intestacy

What happens when someone dies without a will? Who inherits? Plus answers to frequently asked questions about Probate Court

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- Board President of NAMI Dane County
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- JD, Marquette University Law School
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# ESTATE PLANNING

## Basic Ideas

### Capacity

You are able to create and enact plans or directives. You control all of your possessions, property, and your decisions

- Capacity is simply defined as the ability to understand and appreciate one's actions.
- Capacity is fluid – it may be present at some moments, but not all.
- Legal capacity versus medical capacity

### Incompetency

Legal determination. The inability to understand and appreciate one's health and finances. Guardianship may be needed for the person or estate.

### At death

The plans you made are carried out by friends, family, financial institutions, the court, and the government.

# WILL

◀ A will is defined as (Black's Law Dictionary) the legal expression of an individual's wishes about the disposition of their property after death. Wills may also be referred to as a testament.

## Definitions

- ◀
- Testator : the person making the will. Testator is used for males and is considered gender neutral.
  - Testatrix : the person making the will. Testatrix is used for females only.
  - Children : all children of the testator – born and adopted.
  - Issue : children, grandchildren, great-grandchildren and all lineal descendants of the testator.
  - By right of representation : a method of division – utilized when noting that a property should be divided equally among a testator's children, or a deceased child with surviving issue



## WILL “RULES”

- Capacity
- Execution
- Execution, Attestation, and Affidavit
- Witnesses
- Storage

# REVOCAATION

Revocation can be by two primary methods in Wisconsin:

Revocation by writing  
and  
Revocation by physical act

Revival?

The Re-Do  
The Supplement

Burning  
Tearing  
Canceling  
Obliterating  
Destroying

# TRUSTS

A trust is defined as (Black's Law Dictionary) the right to beneficial enjoyment of property to which another person holds legal title; a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary).

For a trust to be valid (again, per definition), it must involve specific property, reflect the settlor's intent, and be created for lawful purpose.

The trusts we'll be discussing today are referred to as "private" trusts generally. There are other kinds of trusts that exist – another is the charitable trust.



## Trust terms/definitions

- Beneficiary : A person with an interest
- Settlor/Grantor : a person who creates or contributes property to the trust "creator)"
- Trustee : a person with control over trust assets
- Revocable : a trust that can be revoked by the Settlor without the consent of the Trustee
- Irrevocable : a trust that cannot be modified, amended, or terminated by the grantor.

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## Revocable Trust

Privacy  
Control  
Access  
Avoid Probate

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## Irrevocable Trust

Privacy  
Avoid Probate  
Asset Protection  
Medicaid  
Creditors  
Principal v. Income  
Tax Benefits\*