

Trust) and minimum of two trustees (members of management committee) to form a Trust. The parents may request the well-wishers or relatives of the person with mental illness, whom they can trust to take care of their ill relative, to be the authors and trustees. The objectives of the Trust should be clearly mentioned in the trust deed- in this case, for welfare and maintenance of the person for whose sake the Trust is being formed. Though not mandatory, it is better to register the deed at the sub-registrar's office on Rs. 500 non-judicial stamp paper.

What are the types of Trust?

- Public Trusts: Temples, charitable Trusts are examples of public Trust where the beneficiaries are public at large.
- Private Trusts: the beneficiaries are specified individuals for whom the Trust was formed.

Is there any minimum property for making a Trust?

No minimum property is required to make a Trust.

When is the property transferred to the Trust?

The benefits of the Trust are transferred on the date mentioned in the Trust deed.

How to safeguard the property which is handed over to the Trust? Who is the monitoring authority for the Trusts?

As there are many trustees involved for the common interest, mismanagement is rare. If all the trustees mismanage the Trust, anybody can file a complaint with police or registrar or Income Tax department or Court of Law. The Government, through Registrar/Sub-registrar/Income Tax Commissioner, can intervene.

Is there any government agency to take over the trusts, if people can't trust anybody?

No, there is no government agency which will take over the Trust.

What are the other points to consider when forming a trust?

For the Trust to come into effect, the "Trust deed" is required.

Conditions for cancellation of the Trust should also be mentioned in the Trust deed. It should be mentioned as to who would take the responsibility after the trustees' death.

Government servants should take "No Objection Certificate (NOC)" from their office to be trustees.

80 year old parents of a 50 year old person with mental illness like to deposit money with a trust and want the trust to look after the person. Is it possible?

Although a Will can be formed, forming a separate Trust whose objectives are clearly mentioned will be more beneficial. If they want to transfer the money to the existing Trust, the Trust deed of the existing Trust should allow for donations to be received. Sub-clause to aid in looking after the person should exist.

KNOW YOUR LAWS

The following laws are relevant to making a Will/ forming a Trust.

1. Mental Health Act 1987, Chapter 6, Clause 52, 53, 54 and 56: deals with appointment of guardian, management of property and manager to manage the property
2. The Guardians and Wards Act, 1890
3. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999: Governs Trusts formed for the welfare of persons with mental retardation, autism, cerebral palsy and multiple disabilities. It does not cover mental illness. There will be local committees who will guide to form Trusts, but they can't take charge of the Trust.
4. Women's Right to Property Act/ Hindu Succession (Amendment) Act, 2005

ACKNOWLEDGEMENT

Karnataka State Legal Services Authority

Consult your doctor to know if referral to Psychiatric Rehabilitation Services is suitable for you.

For more details, contact

PSYCHIATRIC REHABILITATION SERVICES
DPNR building (Opposite State bank of Mysore), NIMHANS
Email: nimhansrehab@gmail.com
Visit us on www.facebook.com/prs.nimhans
Phone: 080-2699 5281
(Psychiatric Rehabilitation Services HOD Office)



Psychiatric Rehabilitation Services Department of Psychiatry & Legal Aid Clinic NIMHANS

MAKING A WILL AND FORMING A TRUST

Are you a caregiver of a person with psychiatric disorder? Are you concerned about the best possible use of your resources for the wellbeing/ care of your ill relative after your lifetime? A Will or Trust may help you in doing this. This pamphlet discusses some frequently asked questions about the same.

A Will is a document to give something to somebody after one's death. The Will is executed only after the demise of the person. A Trust is a relationship whereby property is held by one party for the benefit of another. Unlike the Will, the Trust can be functional when the person is alive.

This brochure is meant to make you aware of legal procedures involved in making a Will or forming a Trust. There are different laws on making a according to the person's religion. This brochure pertains to procedures under Hindu law. For more details you may contact Free Legal Aid Clinic, NIMHANS on Tuesday/ Friday between 3-5 PM (080-26995743) or consult your advocate. Free Legal aid services are also available in all district courts for patients and their family members.

FREQUENTLY ASKED QUESTIONS ON MAKING A WILL

Who can make a Will?

Any man or woman, husband and wife together or a joint family who has property can make a Will.

The person who writes the Will should be a major and should be of sound mind at the time of writing the Will.

What are the minimum requirements to make a Will?

Minimum requirements to make a Will are – 2 witnesses and 1 person to execute the Will. The Will has to be kept in a safe place. There are no minimum property requirements to make a Will.

How to make a Will?

The Will can be written on any paper. Two neutral witnesses who are unbiased and who would not benefit from the Will are required. A Family doctor can be a witness. The witnesses need not know the content of the Will. There is no specific format for making a Will. Though an advocate's presence is not required for making a Will, it may be a good idea to seek his/her help.

Types of Wills

- Privileged Will – for Defense personnel. Oral statements are also considered valid.
- Unprivileged Will – anyone can make this Will.
- Mutual Will – Husband and wife can form mutual Wills
- Joint Will – Joint families can form such type of a Will
- Holographic Will – Hand written Wills

Should a Will be registered?

Registration is not compulsory. The Will can be registered with the sub-registrar. The registration charges are about Rs. 100. There is no stamp duty. The Will can then be kept in the safe locker at the attorney/Sub-registrar. When produced as a document in court, a registered Will has more value than unregistered Will.

Appointing an executor and a guardian

The guardian takes care of the person and the property. The executor does what is required of him/her in the Will. If the author of the Will thinks that the beneficiary is capable of managing the property, the author can name the beneficiary as the executor.

While writing the Will, one has to specify the guardian (if required) and the executor. The guardian's and the executor's consent should be taken by the author before nominating them. The author of the Will can name the same person as both guardian and executor.

Who can be a guardian?

The guardian can be a relative, friends, NGO or a Trust. The person/ organization should have consented to be the guardian and the same should be mentioned in the Will. If a person cannot find anyone to be a guardian, one can approach the court of law for appointment of guardians/administrators.

Who should inform the court of law regarding the death of the person who has made the Will?

The beneficiary of the Will or executor should approach the court.

How to make sure that the Will is properly executed?

An executor is required in a Will. They can be either an individual or two people (one can execute in the absence of the other) or an institution. If Will is not executed properly, one can approach a court of law, which will appoint an administrator in such cases.

Would it be better to explicitly mention movable and immovable property's use in the Will?

Yes, it is always better to do that. It can also be mentioned that one can avail only "Life interest" i.e. one can enjoy only the benefits of the interest generated by the property but can't sell/utilize that property.

Can one of the joint owners of a property make a Will?

Yes, he/she can make a Will to dispose his/her share of the property.

Is it necessary to mention that the person is mentally ill in the Will?

The caregiver may mention that the beneficiary has mental illness to justify their decision to give more share of the property to the beneficiary with mental illness or to appoint a guardian. The caregiver may appoint a guardian if he / she believes that their relative with mental illness may not be able to manage the assets or property.

Can a mentally ill person make a Will?

Any person having a sound mind (i.e., having ability to understand the implications of the Will, and to appreciate the value of the property or assets) can make a Will. Many individuals with mental illness have phases of sound mind. Hence, any person

with mental illness can make a Will when in a phase of sound mind. A psychiatrist can certify that the person is of sound mind while making the Will and sign as third witness.

Can a person with mental illness be entitled to property? How can a person who is not able to look after oneself look after property?

Yes, a person with mental illness has full rights to the property. The person should be able to manage the property. If a relative or a well-wisher believes that the person cannot manage his / her property due to mental illness, then he/she can approach the court. A guardian can be appointed.

Women, whether mentally ill or not, can claim the share in the property, self acquired or ancestral from her parents, under the Women's right to property act/ Hindu Succession (Amendment) Act, 2005

What happens when a Will is not made for the disposal of the property?

In such cases, the heirs inherit the property according to class 1 and 2 heirs.

Class 1 heirs: The husband/wife of the person inherits the property. If the person does not have a living spouse, then the property goes to children. If the person does not have any children, it goes to the mother of the person.

Class 2 heirs: If the person does not have an alive spouse, children or mother, property goes to the siblings.

FREQUENTLY ASKED QUESTIONS ON FORMING A TRUST:

What is a Trust?

A Trust is a relationship whereby property is held by one party for the benefit of another. Unlike the Will, the Trust can be functional when the person is alive. Thus, he/she can observe how the Trust works. The Trusts are governed under Indian Trusts Act, 1882.

How to form a Trust?

The parents/relatives of the person with mental illness can form a Trust. There should be an author (person who forms the