



Wills, Trusts and Estate Planning

THE VERY, VERY, VERY BASICS

Overview: Estate Planning

- ▶ Estate planning—Fancy term for making a plan in advance and naming whom you want to receive the things you own after you die and how you want them to receive said things.
- ▶ Things you probably need in some form:
 1. Will/trust
 2. Durable power of attorney
 3. Beneficiary designations
 4. Healthcare power of attorney
 5. Guardianship designations

Powers of Attorney: Be Careful!

▶ **Durable Power Of Attorney**

- ▶ It's important to draft a durable [power of attorney](#) (POA) so an agent or a person you assign will act on your behalf when you are unable to do so yourself. Absent a power of attorney, a court may be left to decide what happens to your assets if you are found to be mentally incompetent, and the court's decision may not be what you wanted.
- ▶ This document can give your agent the power to transact [real estate](#), enter into financial transactions and make other legal decisions as if he or she were you. This type of POA is revocable by the principal at a time of his or her choosing, typically a time when the principal is deemed to be physically able, or mentally competent, or upon death.

▶ **Healthcare Power of Attorney**

- ▶ A [healthcare power of attorney](#) (HCPA) designates another individual (typically a spouse or family member) to make important healthcare decisions on your behalf in the event of incapacity.
- ▶ If you are considering executing such a document, you should pick someone you trust, who shares your views and who would likely recommend a course of action you would agree with. After all, this person could literally have your life in his or her hands.

Probate

- ▶ What is probate?
 - ▶ The purpose of probate is to prevent fraud after someone's death
 - ▶ Examples:
 - ▶ It freezes the estate to determine the will is valid
 - ▶ Ensures all relevant people have been notified
 - ▶ All property in the estate is identified and appraised
 - ▶ That creditors get paid
 - ▶ That taxes get paid
 - ▶ It is the official way an estate gets settled under the supervision of the court

What assets are not included in Probate

- ▶ Some kinds of assets *transfer automatically* at the death of an owner with no probate required. The most common kinds of assets that pass without probate are:
- ▶ **Joint Tenancy** assets-when one joint tenant dies, the surviving joint tenant becomes the owner of the entire asset, without the need for a court order. This is called "right of survivorship." For example, if a house is owned this way, "Jane Sage and John Sage, as joint tenants," and Jane dies, John owns the entire house.
- ▶ **Tenancy by the Entirety or Community Property With Right of Survivorship**-these are forms of property ownership that function like joint tenancy, in that the survivor owns the entire property at the death of the other tenant, but are only available to married couples.
- ▶ **Beneficiary Designations**-retirement accounts and life insurance policies have named beneficiaries. Upon the death of the account or policy owner, these beneficiaries are entitled to the assets in the account or the proceeds of the policy.
- ▶ **Payable on Death Accounts/Transfer on Death Accounts**-bank and brokerage accounts can have designated beneficiaries, too. The account owner can fill out forms to designate who should receive the account assets after their death.

Myth: All wills must be probated.

- ▶ False: A will can avoid probate – Here's how
 - ▶ Joint tenancy - Home married couple
 - ▶ POD's & TOD's
 - ▶ Beneficiary Designations
 - ▶ Co-ownership of accounts

Will

- ▶ Will: A will is a document that provides the manner in which a person's property will be distributed when he dies. It also allows you to name guardians for minor children. A person who dies after writing a Will is said to have died testate.

5 Things to think about when making a will

- ▶ **1. Executor:** The executor, or personal representative, is the person who will be in charge of handling your estate. This should be someone you trust implicitly and who is responsible and organized; administering an estate involves a lot of paperwork. You should talk to this person ahead of time to be sure he or she is willing to accept this role. Let him or her know where to find important documents, such as your will, insurance policies, and passwords for online financial accounts.
- ▶ **2. Property:** Wills cover both real and personal property of the testator (the person writing the will), so you will want to have a comprehensive list to work from as you decide who will get what. Real property includes houses, land, and other immovable objects, while personal property includes bank accounts, stocks, jewelry, family heirlooms, etc.
- ▶ **3. Beneficiaries:** Your beneficiaries are the people who will be inheriting your real and personal property according to your will. Usually these are the people closest to you, but you should also think about what might happen if, for example, you and your spouse die at the same time.
- ▶ **4. Legal Guardian for Minor Children:** Usually when one parent dies, the other parent gets custody of the minor children, but there are circumstances in which this is not the case. Moreover, both parents could die at the same time.
- ▶ **5. Pets:** For many people, pets are members of the family but, under the law, they are personal property. In your will, you can include a provision detailing who should take responsibility for your pets, as well as any special care instructions. Again, you should speak with this person ahead of time to make sure they are willing to take in your furry and feathered family members.

Trusts:

- ▶ **Trust:** A trust is a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries.

REVOCABLE vs IRREVOCABLE TRUSTS

WHAT

REVOCABLE
TERMS CAN BE CHANGED



IRREVOCABLE
TERMS CAN'T BE CHANGED



CAN BE CHANGED



BENEFICIARY



CAN'T BE CHANGED

CAN BE CHANGED



ASSETS



CAN'T BE CHANGED

ASSETS INCLUDED



GRANTOR'S ESTATE



ASSETS EXCLUDED

USES



SIMPLER THAN
A WILL



PRIVATE



PLAN FOR MENTAL
DISABILITY

vs.



TAX
DEDUCTIONS



PROTECTION FROM
CREDITORS



MEDICARE
PLANNING

Wills Vs. Trusts – Trust Benefits

▶ **Trust Advantages:**

- ▶ Since trusts usually avoid probate, your beneficiaries may gain access to these assets more quickly than they might to assets that are transferred using a will. Additionally, if it is an irrevocable trust, it may not be considered part of the taxable estate, so fewer taxes may be due upon your death.
- ▶ Control of your wealth. You can specify the terms of a trust precisely, controlling when and to whom distributions may be made. You may also, for example, set up a revocable trust so that the trust assets remain accessible to you during your lifetime while designating to whom the remaining assets will pass thereafter, even when there are complex situations such as children from more than one marriage.
- ▶ Privacy and probate savings. Probate is a matter of public record; a trust may allow assets to pass outside of probate and remain private, in addition to possibly reducing the amount lost to court fees and taxes in the process.

Wills Vs. Trusts – Trust Benefits

- ▶ **Trust Disadvantages:**

- ▶ The biggest difficulty with trusts is getting them set up. Trusts generally have higher preparation costs than wills and require you to retitle your assets in the name of the trust, which takes time and money. If you don't retitle your assets, those assets won't pass through the trust and instead will go through probate. In addition revocable trusts do not offer special estate tax benefits, trusts don't offer any special asset protection. Your creditors can still get assets in your revocable trust.

Estate Taxes:

- ▶ Good News – For Most!
- ▶ Estates of up to \$11.4 million are free of tax

Disclaimer!!!

▶ Talk to a Lawyer