

Wills vs. Trusts – Explaining the Estate Planning Enigma

By Gina M. Barry, Esquire

Many people believe that they should establish a Revocable Trust in order to facilitate the administration of their estate upon their passing. In many cases, a Will, or Will substitutes, such as joint ownership and beneficiary designations, will accomplish the same goals as a Trust thereby making a Trust unnecessary. In order to determine whether a Trust is right for you, it is important to understand the difference between a Will and a Trust.

Both Wills and Trusts are devices that you can use to provide for the distribution of your estate upon your death. A Will is a document that gives instructions to the Executor of your estate as to the distribution of the assets in your probate estate. The assets in a probate estate include those assets that are held in the decedent's name alone that do not have a beneficiary designated. In order for a Will to "speak," a probate estate must be opened. When the decedent has a Will, probate, somewhat simplified, is a state court proceeding in which your Will is proven, your debts are paid and your remaining property is transferred to your heirs as directed in your Will. The negative aspects associated with probate are (1) expense - probate will generally cost approximately 3-4% of the value of the probate assets; (b) time - probate takes at least one year to complete, but the process may span several years; and (c) burden on family

members - probate will generally require substantial administrative work from your family members.

A Revocable Trust is a written declaration and contract in which you state that you are transferring your property into a Trust for the benefit of yourself during your lifetime and for the benefit of your heirs after you have passed away. Since the Trust is revocable, you would have the power to change, amend or revoke your Trust at any time during your lifetime.

A Revocable Trust typically involves three parties: the grantor, the Trustee, and the beneficiary.

- The grantor is the person who creates the Trust, and usually the one that provides funding for the Trust. There can be more than one grantor of a Trust, such as a husband and wife who create a Trust jointly.
- The Trustee is the person who holds title to the Trust property and is responsible for managing and investing the Trust property. Often, the grantor will also be the Trustee. A successor Trustee is usually named in case of the grantor's death or incapacity.

- The beneficiary is the person or persons who will receive income or principal from the Trust.

Once a Revocable Trust is established, you would need to fund your Trust in order to avoid probate upon your passing and to ensure that the Trust instructions were followed with respect to your assets. Funding a Trust simply means changing the title of your assets from your name individually to the name of your Trust.

Assuming you have transferred all of your assets to the Trust, upon your passing, the Trust would already have custody of your assets, so there would be no court proceeding, no lengthy delays in distribution, no extra fees and no onerous administrative work for your family members. The only act necessary to transfer control of the assets is for the successor Trustee named in your Trust agreement to begin managing the assets as directed in the Trust. This change in power happens without court order. For instance, simply showing a bank or financial institution a copy of the Trust and a death certificate would be sufficient to allow the successor Trustee to take over your bank and securities accounts, assuming they had been titled into the Trust before your incapacity or death.

A Revocable Trust accomplishes

everything that a Will is intended to accomplish, but it also provides other advantages and possibilities. Where a Will always requires probate to “speak,” a fully funded Trust does not have to be probated. Further, if you have heirs who have difficulties with managing their finances, you can use a Trust to spell out precisely how the beneficiary may use the funds. By doing so, you can ensure that your heir can not squander the Trust assets as they could if the assets were given to them outright. Also, in the case of a married couple, specialized Revocable Trusts may

be used to minimize estate taxes.

Although Trusts can be extremely useful when used appropriately, establishing and funding a Trust can be an expensive and time-consuming process. Fortunately, most estate plans do not require a Trust for stated goals to be met. Still, as there are many possibilities with respect to Trust planning, it is best to contact a competent advisor to discuss your particular situation and your specific goals in order to determine whether a Trust is appropriate for your estate plan.

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