



August 2012

Wills vs. Trusts – Which is Right for You?

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One of the most common decisions you will face when establishing an estate plan is whether to create a Will or a Revocable Trust. Both Wills and Revocable Trusts are devices that you can use to provide for the distribution of your estate upon your death, and most estate plans do not require a Revocable Trust for stated goals to be met. In order to determine whether a Will or a Revocable Trust is right for you, it is first necessary to understand the differences between them.

A Will gives instructions to the Personal Representative of your estate as to the distribution of the assets in your probate estate. Your probate estate consists of those assets that, at the time of your death, are held in your name alone and do not have a designated beneficiary. In order for a Will to “speak,” the Will must be probated. Somewhat simplified, probate is a state court proceeding in which your Will is proven, your debts are paid and your property is transferred to your beneficiaries as directed in your Will. The negative aspects associated with probate are (1) expense - approximately 3-4% of the value of the probate assets; (b) time - at least one year to complete; and (c) burden on family members - generally

requires substantial administrative work by your family members.

While a Will does require probate, in many cases, it is not necessary to establish a trust just to avoid probate. Will substitutes, such as joint ownership and beneficiary designations, pass your assets to your heirs without the necessity of probate. In cases where Will substitutes are not sufficient or desirable, a trust may be in order.

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 desired beneficiaries after you have passed away. You can amend or revoke this type of trust at any time during your lifetime so long as you remain competent to do so.

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

- The grantor is the person who creates the trust and places assets into 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 legal 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 to serve if the grantor becomes incapacitated or passes away.
- The beneficiary is the person or persons who will receive income or principal from the trust.

Once a Revocable Trust is established, you must fund the trust in order to avoid probate upon your passing and to ensure that the trust instructions are followed. 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, when you pass away, the trust would already have custody of your assets, so there would be no court proceedings, no lengthy delays in distribution, no extra fees and no onerous administrative work for your family members. Note well, if you establish a Revocable Trust, competent counsel will recommend that you also establish

a Will, which is known as a Pour Over Will and which leaves all of your assets to your trust. This will ensure that if you do not fund your trust during your lifetime, your trust will still carry out your wishes upon your passing, at least with respect to your probate assets.

A Revocable Trust accomplishes everything that a Will is intended to accomplish, but with other advantages. A fully funded trust does not have to be probated, which means your estate not only avoids the expense, time and burdens stated above, but also any potential Will contest. In addition, if you have beneficiaries who are minors, disabled or who have difficulty managing their own finances, a trust can be used to

precisely control how the beneficiary will receive the benefit of the funds. As a trust can provide a solution to a myriad of estate planning concerns, a trust is often more desirable when your estate plan include minor or unstable beneficiaries, family disharmony that could set the stage for a Will contest or assets held in multiple states that could result in more than one probate being required if a trust is not established.

As your estate plan should be specific to your situation and goals, only you can decide whether you should establish a Will or a Revocable Trust, but you need not make that decision alone. Contact a competent advisor to discuss your particular

situation and your specific goals, and the advisor should assist you with determining whether a Will or a Revocable Trust is best for you.

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