

Wills and Revocable Living Trusts – The Basics

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Some Common Estate Planning Myths

- Estate Planning is only for the wealthy
- Estate Planning is best done when you're seriously ill or dying
- Estate Planning is not needed if your family knows your wishes
- Do-It-Yourself Estate Planning is a cheaper alternative
- Your estate needs to be left equally to your heirs to make everyone happy. Fair = equal
- If you have a Will, you avoid Probate

Some Common Estate Planning Myths (continued)

- If you have a trust, the assets in it are protected from being used toward long-term care or other health care needs
- Estate Planning is a “one and done” process
- Estate Planning is “one size fits all”
- The lawyer holds a “reading of the Will” with your family after your death

Legal Terms – Defined

- **Will:** A legal document that directs where a person’s property should go after that person dies.
- **Revocable Living Trust:** Also called an inter-vivos trust, is an estate planning device that allows a person to transfer assets to one or more persons (trustee) before and after they die
- **Estate:** All of the property owned by a person, including real estate and personal property
- **Probate:** The process of settling your estate after you die, including paying creditors and heirs, and validating a will (if there is one)
- **Personal Representative:** A person responsible for the administration of an estate. This includes paying creditors and heirs.
- **Beneficiary:** A person or entity designated to receive property under a will, a trust, or another financial asset

Will Basics

What is a Will?



- A will is a simple way to ensure that your money, property, and personal belongings will be distributed as you wish after your death.
- A will allows you to appoint a specific person or persons to handle your estate at your death.
- The law does not require you to have a will.
- If you die without a will, Minnesota inheritance laws control how your estate is divided.

Will Basics

What Rules Apply to Wills?

- You must be 18 or more years of age and have the capacity to make a will. You must also intend for the document to operate as a will.
- Capacity to make a will is defined in Minnesota as:
 - [t]he testator (will maker) must understand "the nature, situation, and extent of his property and the claims of others on his bounty or his remembrance," and be able to hold these things in his mind long enough to form a rational judgment concerning them.



Will Basics

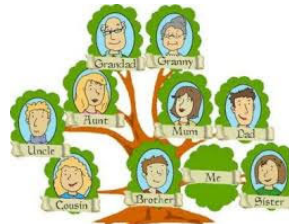
Basic Elements of a Will

- Basic Elements of a Will:
 - Your name;
 - Your place of residence;
 - Any specific gifts or assets to specific person(s);
 - Name of spouse, children, or other beneficiaries, such as charities or friends; alternate beneficiaries in the event a beneficiary predeceases you;
 - Name of a personal representative to manage the estate (formerly called "executor");
 - Name of a guardian and alternate for minor children;
 - Establishment of any testamentary trusts and name of trustee(s) for testamentary trust(s).
 - Your signature; Witnesses' signatures.

Will Basics

What information do I need to gather to prepare a will?

- Information needed to prepare a will:
 - Your objectives of how you want your assets to pass at your death;
 - An inventory of your current assets (real estate, financial accounts, retirement accounts, debts);
 - A list of your family members and other individuals or charities you wish to receive your assets at your death;
 - A family tree showing your spouse, children, grandchildren, stepchildren, etc.
 - Note any concerns you have about any of your beneficiaries and if they need special protection (minors, disabilities, issues handling money, etc.)



Will Basics

What does a Personal Representative do?



- Responsibilities of a Personal Representative:
 - Filing your will, an inventory of your assets, and other documents with the probate court, usually with the help of an attorney;
 - Paying valid debts to creditors;
 - Filing tax returns and paying any taxes due;
 - Notifying agencies and companies of the death;
 - Ordering death certificates;
 - Canceling credit cards, subscriptions, etc.;
 - Distributing your assets according to your will.

Will Basics

Can I change or update my will?



- A will is effective unless you change it or revoke (cancel) it, so it is important to review it periodically
- You may want to update or change your will if any of the following take place:
 - Your marital status changes
 - A child is born
 - The death of a beneficiary of your assets
 - You move to a different state
 - Your assets change significantly
 - Your selection for personal representative no longer represents your wishes or they are unavailable to act
 - A change in the law that affects your will.

What is Probate?

Definition



- Probate is the legal process to transfer assets held in your name alone at your death to the individuals who are to receive your assets either through your will (testate), or through the intestate statute provisions (if you don't have a will).

What is Probate?

When is it needed? What type of assets?

When is probate necessary?

- In Minnesota, when an individually dies with assets in his/her name alone exceeding \$75,000 in value, or any amount of real property
- If you reside in another state but own property in Minnesota, you may also be subject to probate
- Real estate is probated in the state in which it's located

What type of assets are not subject to probate?

- Assets held in joint tenancy with another
- Joint bank accounts
- Payable on Death accounts
- Retirement Assets with a designated beneficiary/ies
- Life Insurance with designated beneficiary/ies
- Real estate subject to a Transfer on Death Deed

What is Probate?

Is there another method for small estates?

What if my assets are less than \$75,000?

- If you have no real estate in your name alone, and your assets are less than \$75,000 in total, then your assets can be collected by your heirs with an "Affidavit for Collection of Personal Property"
- Earliest you may collect assets by Affidavit is 30 days post-death



Trust Basics

What is a Trust?



Trust Basics

Some types of Trusts

Testamentary Trust

- Created by a will after a person's death
- Assets to fund the trust can come from a beneficiary-designated asset (life insurance, retirement account, etc.) or through the probate process
- Can be used to manage assets until a minor reaches adulthood, for example

Revocable Living Trust

- Created during a person's lifetime
- Assets are retitled into the trust and managed by the trustee
- A revocable living trust can be changed or revoked during the settlor's lifetime

Trust Basics

What does a Trust do?



A revocable living trust is an estate-planning device

- provides for asset management in the event of your incapacity;
- provides for distribution of your assets at death;
- can provide for provisions to delay distribution of assets to minors or others needing financial management of assets, and
- if funded properly, avoids a court probate procedure to transfer assets at death;
- is private - does not need to be filed with a Court or made public so maintains your privacy
- may be changed, amended, revoked

Trust Basics

What rules apply to Trusts?

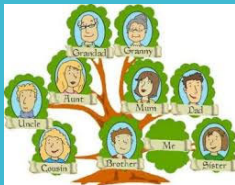
- Requirements for Creation of a Trust: Minn. Stat. §501C.0402
 - A trust is created only if:
 - . . . The settlor has capacity as required under section 501C.0601
 - The settlor indicates an intention to create the trust;
 - The trust has a definite beneficiary . . .
 - The trustee has duties to perform
- Capacity to create a trust: Minn. Stat. §501C.0601
 - Same as that required to make a will
 - i.e., any person 18 or more years of age who is of sound mind.
- Trust Purposes: Minn. Stat. §501C.0404
 - A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Trust Basics

Basic Elements of a Trust



- A trust is created by the transfer of property by the owner (called the "settlor," or "grantor," or "donor,") to the "trustee(s)"
- The settlor(s) can be the initial trustee(s), and successor trustees, named in the trust, act when the initial trustee can no longer act due to incapacity or death.
- The trustee(s) holds the title to the property in the trust and manages the trust property for the benefit of the beneficiaries of the trust.



Trust Basics

What information do I need to gather to prepare a Trust?

- **Information needed to prepare a Trust: (similar to wills)**
 - Your objectives of how you want your assets to pass at your death;
 - An inventory of your current assets (real estate, financial accounts, retirement accounts, debts);
 - A list of your family members and other individuals or charities you wish to receive your assets at your death;
 - Family information: spouse, children, grandchildren, stepchildren, etc.;
 - Note any concerns you have about any of your beneficiaries and if they need special protection (minors, disabilities, issues handling money, etc.);
 - Your choice for successor trustee(s) when you can no longer act as trustee due to incapacity or death.
 - One or more of your children?
 - A trusted friend or relative?
 - A professional trustee, such as a bank with trust services?)

Trust Basics

What are the duties of a trustee?



What are duties of a trustee?

- A trustee is held to a high standard of care in respect to trust assets
- A trustee is considered a "fiduciary" and has legally-prescribed duties
- Must act in the best interests of the beneficiaries and to manage trust interests prudently
- Responsible for distribution of assets to beneficiaries per trust terms

Is a trustee obligated to act?

- A trustee cannot be forced to becoming a trustee just because they are named in the document
- It is best to talk to your intended trustee(s) before naming them in your trust to be sure they are willing to act as trustee
- If no trustee is acting, the court can appoint a trustee

Trust Basics

Advantages?

Advantages of a Revocable Living Trust?

- During your lifetime, provides for financial management of your assets if you cannot, due to incapacity or complexity
- Can protect your privacy as only the beneficiaries of the trust need to be informed of the nature and value of assets (not the court/public)
- Avoids the time delays & costs associated with probate
- Avoids probate of real estate in more than one state
- May be amended or revoked by the settlor (with capacity)

Trust Basics

Disadvantages?

Disadvantages of a Revocable Living Trust?

- Must ensure that your non-beneficiary designated assets are titled in the name of your trust, and remember to title new assets (real estate or financial accounts) into the name of the trust
- A bit more involved to set up initially than creating a will, but less expensive to administer than a will after death

Comparison: Wills and Trusts

Will

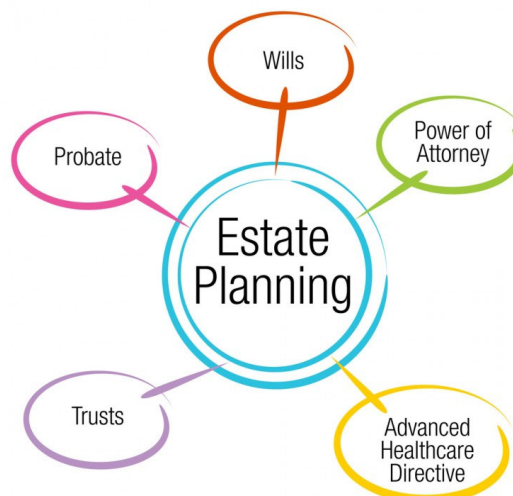
- Main purpose: determine the distribution of assets at death
- Administered at your death
- Subject to a Court Probate proceeding if assets are held in your name alone and include real estate or financial assets in excess of \$75,000
- May be modified during your lifetime as long as you have capacity

Trust

- Main purposes: lifetime management of assets (in event of incapacity) and distribution of assets at death by trustee(s)
- Requires retitling of assets into the trust
- Avoids Court Probate proceeding if assets appropriately titled
- May be modified during your lifetime as long as you have capacity

Other Important Legal Protections

Powers of Attorney
Health Care Directives





Questions?

Thank you for
attending!



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