

Do I Need a Trust?

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Our Roadmap

- ▶ I. Revocable Living Trust vs. Last Will and Testament.
 - ▶ A. Characteristics of each instrument
 - ▶ B. Differences
- ▶ II. When is a Trust better than a Will?
- ▶ III. How is a Trust administered?

Trusts

- ▶ A “trust” can refer to a wide range of legal instruments.
- ▶ An in-depth consideration of all possible trusts is well outside the bounds of our discussion.
- ▶ The focus today is on a Revocable Living Trust, and all references to a “trust” in this presentation are references to such a trust.
- ▶ A Revocable Living Trust may be called any of the following:
 - ▶ Inter vivos trust
 - ▶ Living trust
 - ▶ Revocable trust

Will & Trust Terminology

(In alphabetical order)

- ▶ Beneficiary - A person or entity either named in a Will to receive specific property OR a person or entity for whose benefit property is held in a Trust.
- ▶ Executor - Person in charge of “winding up” the affairs of a deceased person if that person died with a valid Will.
- ▶ Settlor - Person making a trust and transferring his or her property to the Trust. Also known as: Grantor, Trustor.
- ▶ Trustee - Person or entity in charge of administering the Trust according to the instructions contained in the trust instrument; a fiduciary.

Characteristics of a Will

- ▶ Becomes legally operative upon the death of the Testator (person who created the Will).
- ▶ Contains instructions about distribution of assets after death.
- ▶ Names an Executor.
- ▶ Names a Guardian for minor children (as applicable).
- ▶ MAY include a “testamentary trust” to take effect upon death.

Characteristics of a Trust

- ▶ Becomes legally operative upon signing.
- ▶ Passes an interest in property to the Trustee and Beneficiaries instantly.
- ▶ Contains instructions for distribution of assets during life AND after death.
- ▶ May be amended or revoked during Settlor's life, so long as Settlor is legally capable.
- ▶ Becomes irrevocable at death.
- ▶ Names a Trustee (and successor trustees).
- ▶ May terminate soon after death or may continue for decades.
- ▶ For married couples, one trust for each spouse.

What are the Differences in the Planning Process?

Will

- ▶ Planning Process
 - ▶ One step - Sign and Done.

Trust

- ▶ Planning Process
 - ▶ 1. Sign Multiple Documents
 - ▶ Trust instrument
 - ▶ Certificate of Trust
 - ▶ Pour-over Will
 - ▶ Deed(s) for real estate
 - ▶ 2. Fund the Trust!

What Assets Should be in a Trust?

- ▶ Generally speaking, the following assets should be placed in a Trust:
 - ▶ Real estate
 - ▶ Accounts without any type of beneficiary designation:
 - ▶ Checking/money market accounts
 - ▶ Brokerage accounts
 - ▶ Stocks (certificates and book entry shares)
 - ▶ U.S. Treasury bonds
 - ▶ Don't forget to check your safety deposit box!
 - ▶ Any non-retirement account **WITH** a beneficiary designation if that designation is not capable of achieving your estate planning goals

What Assets Should be in a Trust?

- ▶ What about **personal vehicles**? Because vehicles depreciate quickly, I generally advise clients to keep personal vehicles out of a Trust. There is an affidavit process available to transfer title of vehicles after an owner's death.
- ▶ What about **retirement accounts**?
 - ▶ There are very specific, complicated rules surrounding the inheritance of qualified retirement accounts. The simple rule is this: if your circumstances allow, it is better to name individuals (or charitable organizations, if you wish) as beneficiaries of qualified retirement accounts.
 - ▶ While it is possible for a Trust to be drafted so that it may accept Required Minimum Distributions on behalf of beneficiaries, there are very specific rules and requirements that must be followed. Proceed with caution!

What are the Differences in the Post-Death Process?

Will

- ▶ Probate More Likely
 - ▶ Attorney fees/court costs
 - ▶ 6-18 months to complete
 - ▶ Process - New EIN, Notice, Claims Period, Tax Matters, Distribution
 - ▶ Public access to probate records

Trust

- ▶ Probate Less Likely
 - ▶ (Avoiding probate entirely is the goal)
 - ▶ Administration is necessary, which will be outlined in detail later in the presentation
 - ▶ Private, unless Trust is subject of legal action

When is a Trust better than a Will?

- ▶ There is no legal “right or wrong” with choosing a Will over a Trust.
- ▶ The decision of whether a Trust or Will is right for you depends on a number of factors, which often include the following:
 - ▶ Desire for privacy.
 - ▶ Desire to reduce probate attorney fees and court costs.
 - ▶ Willingness to work through all that is required to (1) fund a Trust and (2) ensure that future purchases are made formally by the Trust, as appropriate.
 - ▶ A more seamless transition in the event of legal incapacity.

When is a Trust better than a Will?

- ▶ For married couples, there are some other factors to consider:
 - ▶ If all assets are either (1) jointly owned or (2) beneficiary-designated, then probate will not be necessary upon the death of the first spouse. The surviving spouse may need to consult with an attorney to complete one or more Affidavits of Surviving Spouse for Change of Title to Real Estate, but often no more legal work is necessary.
 - ▶ For married couples, special attention must be made to ensure that assets are appropriately allocated between the two trusts. (Remember, each spouse will have his or her own trust.)

Administration of a Revocable Living Trust During Life of Settlor

- ▶ The Trust is the legal titleholder, but the Settlor's Social Security Number is the Tax ID Number (or EIN) for the trust.
- ▶ There is no separate tax return; all income to the Trust is shown on the Settlor's individual 1040 return.
- ▶ The Settlor may add assets to the Trust, amend the Trust, distribute from the Trust, or revoke the Trust, provided the Settlor has legal capacity.
- ▶ The Settlor is generally the initial trustee. However, Settlor's spouse, adult child, or a bank may also serve as the initial trustee, a co-trustee, or a successor trustee.
- ▶ No beneficiary (other than the Settlor) is entitled to request an accounting or list of Trust assets while the Settlor is living.

Administration of a Revocable Living Trust After Death of Settlor

- ▶ A Trust does not “magically” terminate; there is still work to be done.
- ▶ The successor trustee will obtain a new, unique EIN for the Trust.
- ▶ The trustee will provide for the filing of the decedent’s final 1040 tax return and will file any 1041 fiduciary income tax returns for the Trust as needed.
- ▶ Notice is not required to be published in the local newspaper, but doing so limits the time for claims or legal challenges to the Trust.
- ▶ A determination will be made as to the beneficiaries and whether Iowa inheritance tax is owed as a result of the Settlor’s death. Inheritance tax returns will be filed as needed.
- ▶ If the Settlor is survived by a spouse, a determination must be made regarding the filing of a protective 706 tax return.

Disclaimer

The information provided in this seminar is general in nature and should not be used as a substitute for personal legal advice received from an attorney who understands your estate planning goals and your specific circumstances.