



FAQ about Wills and Trusts

What is a Will?

A Will is a written document that directs how you want your estate distributed after your death. It can be revoked by you at anytime before your death, so long as you are of sound mind. Under Texas law, it has no legal effect unless and until it is admitted to probate.

Why do I need a Will?

By executing a Will during your lifetime, you exercise control over what happens to your property — including your business and your home — after your death. When you have a Will, you can control:

Who will be the guardian of your minor children, and how their needs will be met.

- Who will get your property.
- What property to give.
- How much to give.
- How you can restrict the bequest if you wish to do so.

There are many reasons why it is advisable for you to have a Will, including:

- If you have no Will, the state will distribute assets to your family using a predetermined formula. · A Will can distribute your assets to whom you want, rather than how your state will otherwise distribute your assets. · Probate costs and delays associated with passing along your property to your chosen heirs can be minimized through lifetime planning.
- A guardian for your children may be chosen ahead of time.
- An executor to carry out your Will may also be preselected.
- Income may be provided for your family during the period immediately following your death, while probate is occurring.
- A Trust arrangement may require that a Will be executed in order to completely fund the Trust

What is probate?

In its simplest terms, probate is the process of retitling your property to its new owners once you die. This is done through a formal legal process of authenticating and implementing your will. While a hearing before a court is always required, the process of proving the validity of a properly executed will is relatively simple.

The process also gives an executor, trustee, guardian, or custodian named in your Will the power or authority to act in their respective capacity by managing and distributing your property and caring for your children.

Who are the parties named in a Will?

If you have minor children or heirs with special needs, your Will will designate three individuals or organizations to carry out the duties of executor, guardian and trustee. The role of the executor is to collect your property and distribute it according to the wishes you spell out in your Will. To do this, the courts give executors powers to dispose of property as if they owned it themselves. However, the executor has a legal responsibility to the beneficiaries and may, in special circumstance, be formally supervised by a probate court. The executor is entitled to a reasonable fee or commission.

The tax laws generally focus the responsibility for death tax filings and payments on the executor under a will.

If you have minor children, the choice of a guardian may be the most important decision you make in your lifetime. The guardian steps into your shoes as your child's parent. They have all of the rights and responsibilities you have in raising your children. In many families, relations outside the nuclear family often have heated opinions about the choice of guardian, and those opinions may not reflect your own. Barring a legal reason why a guardian named in a Will cannot serve, courts are very reluctant to go against your wishes in your choice of guardian.

A trustee manages a trust. It is his job to see that the property held by the trust is growing through investments, and that the property is being distributed to the trust's beneficiaries the way that you intended for it to be.

What is intestate succession?

Intestate succession is the process of distributing your property if you do not have a Will. Under intestate succession, a judge will appoint a person to distribute your property according to a set formula determined by the state, pay your debts, and handle other matters related to your estate. This person will be required to get prior authorization from the judge for each act to be performed. He/she would also be required to post a bond. The whole process can be very time consuming and costly.

Furthermore, if you have minor children at the time of your death and no Will or other parent who is able to care for them, the court will designate a guardian to care for them and to manage their property.

What types of property pass under a Will or by Intestacy?

The Will only designates the transfer of ownership for assets not distributed in any other way. Property where ownership is registered as joint tenants with right of survivorship, ownership by a trust, life insurance, and investments that designate a named beneficiary upon your death, are transferred directly to the designated joint owners, transferees, or beneficiaries. Examples include life insurance or retirement plan proceeds which pass to a named beneficiary rather than your estate, as well as real estate or bank or brokerage accounts held in joint names with right of survivorship.

Ancillary Documents to Wills

What is a Durable Power of Attorney?

A Durable Power of Attorney lets you give someone else power to manage your property if you cannot do it for yourself. Your agent is empowered to act in your name and is obligated to be your fiduciary – meaning they must act in your best financial interest at all times and in accordance with your wishes. A Durable Power of Attorney is effective immediately, and your agent does not need to prove your incapacity in order to sign your name.

Why do I need a Durable Power of Attorney?

If you become incapacitated without having assigned a durable power of attorney, the court will step in and appoint a guardian. Guardianships are costly and time consuming affairs. A guardian is required to make periodic visits to the court to report on your situation, and the guardian must obtain permission in advance to dispose of property.

What is a Medical Power of Attorney?

A Medical Power of Attorney lets you give someone else the power to speak to doctors and make medical decisions for you if you are unable to communicate. The person you have the power to acts as your agent.

What is a Directive to Physicians Family and Surrogates?

This document, more commonly known as a Living Will is a document that allows a person to state in advance his or her wishes regarding the use or removal of life-sustaining or death-delaying procedures in the event of illness or injury.

Trusts

What is a Trust?

All trusts are, at their base, a contract. A party, known as a settlor, contributes property to the trust for the benefit of a beneficiary. The trustee manages the trust according to the wishes of the settlor. Beyond that, the terms and conditions that are part of a trust are limited only by the parties' imaginations. Subject to certain legal restrictions, you can form a trust naming yourself as a beneficiary.

What is a Living Trust and how can it help me?

A living trust is a revocable trust established during your lifetime that governs how assets are passed on when you are gone. Because it is revocable, you can change it at any time. If properly constructed and managed, it allows heirs to avoid probate. It also allows the trustee you appoint to run your business without going to court to get approval for every move. If you own out-of-state property, a living trust will help heirs by avoiding probate in multiple states. Also, terms of a living trust can usually be kept secret. Wills are public

documents once they are filed with the courts. Note: These Trusts will not save any taxes. Tax avoidance can be accomplished only by more complicated Trust arrangements.

What is a Testamentary Trust?

A testamentary, or contingent, trust is one that is created in your Will and that take affect after you die. It is important to note that testamentary trusts require that the Will be probated. The retiling of assets into the Trustee's name, discussed above, does not occur until after death and probate. These trusts might then be accountable and have to report to the court, under state law unlike living trusts.

Estate and Gift Tax Planning

Estate Taxes

In 2006, every estate has a \$2 million exemption from estate taxes. The tax rate for amounts above that is 46%. For example, a person dying in 2006 with an estate valued at \$3 million would have to pay \$460,000 in estate taxes. For estate tax purposes, the value of all of your property, including the value of your home, your retirement accounts and the death benefits from your life insurance, are included in your estate. Many people are surprised to find that upon the passing of a loved one that even people who live modestly can incur estate tax liability.

Gift Taxes

The federal government also imposes a tax on gifts made to others. Every individual has a lifetime exemption amount of \$1 million. Beyond that, gifts are taxed at 46%. However, you also have the ability the give up to \$12,000 every year to as many people as you wish. From a gift planning perspective, these exemptions can be leveraged in incredibly useful ways to minimize your eventual estate tax liabilities.

Tax Planning Options

Below are several of the most popular tax planning tools for reducing estate and gift taxes. In estate planning, there is not a “one size fits all” option. Every situation is unique, and your situation may require one, all or even none of these options.

- **Bypass Trusts**

A bypass trust, also called a credit shelter trust, enables a person to take advantage of their estate tax exemption while still passing all of their property to their spouse. Generally, your property will pass to your spouse with no estate tax, regardless of the size of your estate. The estate tax is incurred when the property passes to the next generation. A bypass trust enables you to pass property first to your spouse, and then your children, without incurring estate tax on the amount in the trust.

- **Charitable Trusts**

While direct donations to charity are income and estate tax deductible, once you reach certain income limits, the value of this benefit begins to decrease. By directing your gifts through a charitable remainder or charitable lead trust, you can more efficiently provide gifts to charity and realize estate tax benefits while passing property to the next generation.

- **Grantor Retained Trusts**

Grantor retained trusts enable you to provide current income for yourself, while creating a gifting program to reduce your estate. The trust is established for a set term, you receive the income for the trust during its term, and at the end of the term, the trust property passes to another person. This strategy creates a “value freeze” for estate tax purposes. Therefore, when the property passes to the intended beneficiary, it is taxed on its value at the creation of the trust.

- **Family Limited Partnerships**

In a family limited partnership, a family (although nonfamily members may participate) pools their assets to invest as one entity. The investments can be in any type of vehicle, from stocks and bonds to the closely held family business. This type of investing is favored by families with a great deal of wealth because it allows for centralized control of the family fortune, it provides the benefit of volume investing, and the partnership structure is a valuable way to teach the next generation about money management. By surrendering control of your individual investment to the partnership, your investment can be given a discount when it is valued for estate tax purposes.

- **Irrevocable Life Insurance Trusts**

While life insurance proceeds are included in the value of your estate, if the policy is owned by an irrevocable life insurance trust, the proceeds will pass outside of your estate. You can take advantage of your annual gift tax exclusion to fund the trust.