



WILLS AND TRUSTS

WHAT IS A WILL?

A will is the most basic type of estate planning document. It provides instructions regarding actions to be carried out after your death. Typically a will provides for:

- Distribution of some or all of the assets in your name;
- Nomination of a guardian for your minor children; and
- Nomination of an executor, the person who carries out your instructions.

WHAT PROPERTY ISN'T COVERED BY A WILL?

The following assets do not pass under your will:

- Life insurance proceeds
- Joint tenancy assets
- "Pay on death" accounts
- Retirement plans
- Revocable (living) trust assets

CAN I PREPARE MY OWN WILL?

Yes. However, a will must be prepared and executed in compliance with specific legal formalities that can easily be confused or overlooked by a lay person. Further, only a qualified attorney can ensure that your desires are adequately expressed in language that is best capable of withstanding a challenge. For these reasons it is strongly recommended that your will be prepared by a qualified estate planning attorney.

WHAT IS A REVOCABLE LIVING TRUST?

A revocable living trust holds your assets during your lifetime and distribute your assets at death. A revocable living trust are that it avoids probate of assets in the trust and can also avoid a conservatorship of the estate in the event of incapacity.

DOES EVERYONE NEED A REVOCABLE LIVING TRUST?

Not necessarily. However, while there are some general guidelines that apply, because everyone's circumstances are unique it is safest to rely on the advice of a qualified estate planning attorney as to whether you should have a revocable living trust.

WILL MY HEIRS OR BENEFICIARIES HAVE TO PAY ESTATE TAX?

Estate taxes are currently payable only on very large estates. In 2009, only estates with a net value of \$3,500,000 or more are subject to estate tax. In 2010 there is no estate tax. There is likely to be congressional action regarding the extension of the estate tax, limiting it to very large estates, within the next year.

HOW CAN I LEARN MORE?

Contact an attorney who specializes in estate planning. The California State Bar designates certain attorneys who have completed extensive education, testing, and length and breadth of practice criteria as Certified Specialists in Estate Planning, Probate and Trust Law. A list of Specialists in Orange County can be found on the State Bar website. A good alternative referral source is the Orange County Bar Association.

Also, visit the State Bar of California web page for access to three pamphlets published by the State Bar ("Do I Need A Will?"; "Do I Need a Living Trust?"; and "Do I Need Estate Planning?"), as well as a statutory will form and a section of frequently asked questions. Go to www.calbar.ca.gov, click on "Public Services," then click on "Making a Simple Will."

Glossary

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| Advance Health Care Directive | The document that allows an individual to appoint an agent to make care and treatment decisions, and to give instructions about the individual's health care wishes. |
| Annual Exclusion | An amount (currently \$13,000) that can be given annually to any one or more persons. A husband and wife together can give \$26,000 each year to any number of people. |
| Annuity | The periodic payment of a fixed sum of money for a lifetime or for a number of years. |
| Beneficiary | A person or entity that derives benefit from a will, trust, insurance policy, or other legally binding document or contract. |

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| Codicil | An amendment to a will, which must be executed with the same formalities as a will. |
| Conservator | A person or entity appointed by a court to manage the person or estate of a person incapable of managing his or her own affairs. |
| Contingency | A possibility or an event which may occur. For example, a contingent beneficiary. |
| Corpus | The property held in a trust, other than current income. |
| Decedent | A deceased person. |
| Deed | A legal instrument used to transfer title to real property. |
| Domicile | The place where a person has voluntarily elected to reside, not for a temporary purpose, but with a present intention of making it his or her home. |
| Donee | One who receives a gift. |
| Donor | One who makes a gift. |
| Durable Power of Attorney | A document in which an individual or entity is designated to exercise specific powers on behalf of the maker in the event the maker is unwilling or unable to act on his or her own behalf. |
| Escheat | The process by which a decedent's property is transferred to the state. |
| Estate Tax | Taxes assessed by the federal government upon a decedent's right to transfer property. |
| Fiduciary | A person or entity entrusted with duty to care for an asset of another. |
| Guardian | A person or entity appointed by a court to manage the person or estate of a minor. |
| Heirs | Those persons who are entitled to the property of a decedent under the laws of intestate succession. |
| Inherit | To receive property from a deceased person. |
| Inter Vivos Trust (also known as a Living Trust or a Revocable | A trust established, and which may be amended, by a person during his or her lifetime. |

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| Trust) | |
| Intestate | The term used when a person dies without leaving a valid will. |
| Irrevocable Trust | A trust in which the grantor expressly gives up the power to alter, amend or terminate the trust, in whole or in part. |
| Joint Tenancy | A form of co-ownership in which two or more persons hold title to the same property, with title eventually passing to the ultimate survivor. |
| Life Estate | The right of a person to use property only for his or her lifetime. |
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| Payable on Death(POD) | An account that is automatically payable at death to a named person. |
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| Personal Property | Tangible assets whose ownership arises out of physical possession or a document of ownership. |
| Probate | The formal administration of the estate of a decedent, involving the collection of assets, payment of expenses, and distribution to heirs or beneficiaries. |
| Tenancy in Common | A type of co-ownership between two or more persons who hold undivided interests in property without any right of survivorship. |
| Testamentary | Pertaining to a will. |
| Testamentary Trust | A trust established in a will. |
| Testator | A person making or who has made a will. |
| Trust | The legal relationship created when one person holds title to property for the benefit of another. |
| Trustee | The person or entity appointed to hold and administer trust property. |
| Trustor (or Settlor) | The maker of a trust, |
| Will | A legal instrument expressing a person's wishes as to the disposition of his or her property at death. |
| Witness | The person who observes the signing of a will or other legal instrument. |

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