

TRUST VS WILLS

Probate is defined as the procedure by which an Executor proceeds to admit a Will to the jurisdiction of the Surrogate Court, which is proved to be valid or invalid. The term generally includes all matters relating to the administration of estates. There are instances where Surrogate Court monitoring of the estate is desirable. Much has been written about the disadvantages of probate. Following are just a few of the problems associated with probate.

Lack Of Privacy

Documents filed with the Surrogate Court are public information. They are available for inspection to anyone who asks. In large estates which require an accounting, your probate file will contain a complete list of all assets devised by your Will including business assets. This lack of privacy may lead to problems among family members who now know the plan of distribution and may then contest any provisions with which they disagree. Disinherited relatives and creditors are notified and given time by the Court to contest the Will distribution.

Time Consuming

The probate of an estate may take several months to several years to complete. During that time family members may have to apply to the Surrogate Court for an allowance.

Fragmentation - Real Estate

If you own real property in more than one state, probate rules must be followed in each state in which real property is located. The cost and time may be increased.

REVOCABLE LIVING TRUST

A Revocable Living Trust is a legal device that allows you to maintain complete control over your assets and AVOIDS PROBATE. Because there is no probate of a Living Trust, your private financial matters remain private, there are no probate costs, no long delays and loss of control, and no fragmentation of the estate.

You Maintain Complete Control Over Your Property In Trust

The principle behind a Revocable Living Trust is simple. When you establish a Living Trust, you transfer all your property into the Trust, and then name yourself as trustee, or you can name you and your spouse as co-trustees of the Trust. The trustees maintain complete control over the property, the same control you had before your property was placed in trust. You can buy, sell, borrow, pledge, or collateralize the trust property. You can even discontinue the Trust if you choose. That is why it is called a "Revocable" Living Trust. We will explain the "Irrevocable Trust" at the end of the article.

Transferring Property Into The Trust

The transfer of title to property into the Trust is a relatively simple matter. Anywhere you have assets, you will get help in transferring your property into the Trust. Your attorney, securities investor, etc., will provide you with assistance needed to transfer your property into your Revocable Living Trust. Your attorney will provide all the information and assistance you need to properly fund your Trust.

Complete Privacy

Probate records are public, your Revocable Trust documents are private. A Revocable Living Trust will safeguard the privacy of your family and your private financial matters.

Naming A Trustee

Most people name themselves and their spouse as the initial Trustees of their Trust. This is usually true unless one spouse is incapacitated to the point that he or she is not able to manage your assets in the same way you do now.

Gifts To Religious And Charitable Organizations

Many people wish to give a portion or sometimes all of their assets to a religious or charitable organization in order to carry on the work of those organizations that have given them comfort or peace of mind during their lifetimes. This is easily accomplished with a Revocable Living Trust.

Marital Tax Deductions

Federal estate taxes must be paid on any estate worth more than \$600,000 beginning at a tax rate of 37%. Your estate includes not only the current value of your real estate, but also the face value of any life insurance policies, pension or retirement benefits, IRA accounts, bank accounts, stocks and bonds, etc. When you add these all together, and subtract your debts, you might have imagined.

Current tax laws allow you to leave an unlimited amount to a spouse, tax-free. When your spouse dies, the estate is entitled to a \$600,000 tax exemption. The first \$600,000 goes to your beneficiaries free of estate tax. What is not generally known, is that you and your spouse are each entitled to a \$600,000 tax exemption. If the exemption is not preserved through the use of a Revocable Trust, it may be lost.

A Revocable Living Trust can easily be structured to automatically create separate Trusts upon the death of either your spouse. Here's how it works. If the wife dies first, the husband has total control of his Trust. Also, for the remainder of his life, he receives all income from her Trust and has the use of the assets whenever needed for living expenses. When he dies, each Trust will claim its \$600,000 tax exemption, and as much as \$1.2 million will go tax-free to their children, or any other beneficiary they designate, without having to go through probate.

http://www.njlaws.com/trust_v_wills.htm

Kenneth Vercammen is the Managing Attorney at Kenneth Vercammen & Associates in Edison, NJ. He is a New Jersey trial attorney has devoted a substantial portion of his professional time to the preparation and trial of litigated matters. He has appears in Courts throughout New Jersey each week for litigation and contested Probate hearings.