

# WILLS AND TRUSTS

## Single

-Suitable for an individual making a Will, this type of Will includes:

-Appointment of Executors

-Noting any gifts

-Nominating a beneficiary who will receive the remainder of the Estate after all other beneficiaries have received their inheritance and all debts have been paid (residual beneficiary).

## Mirror

A mirror Will produces two Wills that will be largely identical in content, but will mirror each other.

This type of Will is appropriate for people who intend to leave their Estate to their spouse and then to alternative beneficiaries on the surviving spouse's death.



## Trust Wills

A trust is an arrangement whereby assets are handed over to a number of individuals to hold and invest on behalf of someone else. This can be an immediate post death interest Will (the beneficiaries are specified now, for example – I give my Estate to A for her life and then to B) or discretionary trust Will (wide discretion is given to the trustees to benefit those individuals who most need it, for example – I give my Estate to my trustees with wide discretion to benefit any of the following: my children, my grandchildren, my nieces and nephews etc.).

## Property Trust

Your share (or half share in the property) is put into trust to protect the value of it for your beneficiaries. This is a useful tool if you are concerned about preserving your Estate and want to protect it from being used to pay for care home fees for your spouse after your death.

## Flexible Trust

These trusts allow someone to benefit immediately on your death whilst safeguarding the value of the assets for others. This type of arrangement is becoming more common as people divorce, remarry and have 'second' families as in this example:

## Discretionary Trust

These trusts can be the most useful type of trusts – rather than deciding now how you would like your Estate to be split, you can leave it up to the trustees to decide depending on the circumstances as they are when you die. These can also be extremely useful if you have a beneficiary in receipt of Government benefits. To place their inheritance into a discretionary trust does not affect their entitlement to means tested benefits.

These trusts are also advisable with disabled beneficiaries. Unmarried couples can also benefit from considerable inheritance tax savings if they use this type of trust.

## Others

A Living Will allows you to specify your wishes with regards to medical treatment should you lose capacity, in particular with regards to refusing life sustaining treatment. While this document does not have to be followed by the doctor, a Health and Welfare Lasting Power of Attorney that specifically deals with your wishes regarding healthcare and treatment is binding.

## Some Basic Facts about Wills

### Assets That Pass Under Your Will

All property which is in your name alone will be disposed of by your Will. For example, a bank account, stock, real estate, your automobile, furniture, household items and similar items in your name will pass under your will. If you own an interest in real estate as tenant in common with someone else, your interest will also pass under your Will.

### Assets That Do Not Pass under Your Will

- Property that has a joint co-owner will pass to the co-owner who outlives you
- Real estate in joint names with rights of survivorship will not be included in your probate estate or will not be affected by the terms of your Will; it will pass to the other joint owner who outlives you.
- Life insurance payable to named beneficiaries will pass directly to the beneficiaries.
- Pension, retirement or other employee benefits payable to named beneficiaries will pass directly to the named beneficiaries.
- U.S. Savings Bonds which are in joint names will pass to the survivor. Those payable on death to a named beneficiary will pass to the named beneficiaries.
- Property which has been transferred to a trust will pass to those people named as beneficiaries.

(If the named beneficiary in any of the above examples is “your estate” or your “Personal Representative”, then this property does pass under your Will.)

## Questions

D. Spoken aloud to a judge

1. A person who dies without a will is called...?

- A. Testate
- B. Intestate
- C. Decedent
- D. Stupid

3. An amendment to a will is called...?

- A. Codicil
- B. Estate
- C. Amendment
- D. Revocation

2. You must have all of the following to create a will except...?

- A. Intention to make a will
- B. Testamentary Capacity
- C. Signed and witnessed by two people who aren't inheritors

4. An entirely oral will is called a/an...?

- A. Oral will
- B. Nuncupative will
- C. Holographic will
- D. Fun will

5. All are ways to revoke a will except...?

- A. Defacing it
- B. Written revocation
- C. Asking for it to be revoked
- D. Adopting a child

6. Ways to prove death include all of the following except...?

- A. Showing the weapon they were killed with
- B. A death certificate
- C. Official notification from the armed forces
- D. A person vanishes for over five years

7. The creator of a trust is called a...?

- A. settlor
- B. testator
- C. decedent
- D. estator

8. A will should be changed after all of the following except...?

- A. Divorce
- B. Marriage
- C. Illness
- D. Birth or adoption of a child

9. A will takes effect...?

- A. When the maker is close to death
- B. When the maker of the will states it is to take effect
- C. When the will says it should take effect
- D. When the maker dies

10. All of the following are implied trusts except...?

- A. Resulting trust
- B. Testamentary trust
- C. Constructive trust
- D. All of the above

## Answers

- 1. B
- 2. D
- 3. A
- 4. B
- 5. C

- 6. A
- 7. A
- 8. C
- 9. D
- 10. B

## Wills and Trusts - FAQs

1. Is A Lawyer Necessary To Draw A Will Or Trust?

There is no legal requirement that a will or trust be drafted by a lawyer. However, there is an abundance of misleading information and myths that surround this area. Attorneys have the training and experience to properly advise a person. The use of "do-it-yourself" forms is unwise. They are normally generic and only a qualified professional can draft documents that meet your needs and comply with state and federal law.

2. How Are Trusts Established?

A trust is a written document that sets forth the terms of the trust. Typically, it names the parties to the trust (Trustee[s] and Beneficiary[ies]) and governs the use and disposition of the assets in the trust, both during the lifetime of the individual and after death.

3. What Is A Living Trust?

There are two types. A revocable living trust is a trust set up by an individual during his or her lifetime that can be completely changed or cancelled (revoked) at any time. An irrevocable living trust is the second type and is not subject to revision or revocation.

4. Are Living Wills The Same As Living Trusts?

They are not related in any way. They each serve different purposes. A living will deals with healthcare directives and an individual's desires regarding the use and continuance of artificial life support systems.

5. What Is A Testamentary Trust?

A testamentary trust is a trust set up in a will that takes effect only on death. It becomes irrevocable upon death and is used for a variety of reasons, including tax planning and preservation of assets for loved ones and financial care, support,

and education of children and other individuals.

## 6. What Can A Living Trust Accomplish?

A living trust can provide for management of assets both during one's life and after death. It can provide for continuity of management of the trust assets and is more advantageous than powers of attorney or conservatorship. It can provide for distribution of the trust assets on death or retain the assets for management for a period of time after death. It may also be used to save estate taxes in a manner similar to a will. Also, a living trust may provide confidentiality and privacy from disclosure to the public. Parties who have a legitimate interest in the trust may be given access to its contents.

## 7. Will A Living Trust Avoid Probate?

Yes, but under current Connecticut law, not entirely. If assets are properly placed in trust before death, the living trust "bypasses" probate as no proceedings are now necessary to pass title on death. However, the Connecticut Estate Tax Return must be filed through the Probate Court. Thus, although the estate tax is currently being phased out, complete avoidance of the Probate Court is not currently possible. However, avoiding the jurisdiction of the Probate Court may not always be desirable and probate fees in Connecticut are very modest. Thus, the probate fee "to be avoided" should be balanced against the cost of creating and administering a living trust, which also has no similar oversight protection.

## 8. What Can't A Living Trust Accomplish?

A living trust does not necessarily save taxes. Reserved rights over the trust and its assets cause income and inheritance taxes to be incurred as if the trust did not exist. The trust can be drafted in a number of ways to save estate taxes, but such tax savings can also be achieved through the use of a will. Currently in Connecticut, a living trust also does not save Probate Court fees. These fees are the same whether or not a trust is used. Nor does a living trust generally protect trust assets from creditors.

## **What Is The Difference Between a Will and a Living Revocable Trust?**

A will designates where your assets go upon death. But sometimes you need someone to make these decisions when you get sick. This is why you need a living revocable trust.

You can appoint yourself as the trustee when you are well and a successor trustee if you become incapacitated.

This makes it easier to get money to your beneficiaries without going through probate court, which can take between 6 months and two years.

A living revocable trust with an incapacity clause will cover all of the bases.

If you cannot agree on guardianship for your child, you will be leaving that decision to the state. The state will assign someone to care for your child. Be smart and make that decision before it is too late.

There are different types of guardians who will oversee your child's life. One type will decide where your child will live, what religion he or she will practice, where he or she will go to school, what medical treatment he or she will receive.

Another type of guardian is in charge of how money is invested and how it is distributed. If you set up a living revocable trust then all can be taken care of within the trust. You can designate the terms before you die.



If you are setting up a 529 college savings account, a 529 Plan Trust can be a successor beneficiary and the child can be the first beneficiary. When it comes to your children, do not leave decisions up to the state.

### **What is Holographic Will?**

A holographic will is one you write with your own hand. Suze says they are better than nothing but there are far better alternatives. To avoid problems, set up a living revocable trust and have the trust as the beneficiary of the life insurance policy.

### **When Should I think about getting a Will?**

Everyone has a will whether you know if or not. The state has already designated where your assets are going if you do not decide for yourself. Suze says everyone needs a will if you have any assets whatsoever. Designate who will get your car, puppy, furniture, etc. Once you have real estate, it is then time for a living revocable trust.

### **Community Property States**

A married couple should own a home in community property with right of survivorship.

If one person dies, the spouse gets a step-up in the cost basis on the entire home, so you will save in income tax if you sell the house.

You need a living revocable trust with an incapacity clause in case one spouse is unable to make decisions. If not, the government and lawyers could be getting the money that should be going to your loved ones.

### **Estate Tax**

Right now in 2008, a parent can pass up to \$2 million to a child estate tax free. In the future that is going to change. The amount that can be passed on will increase until 2010 according to the following scale:

2008	\$2 million
2009	\$3.5 million
2010	NO TAX
2011	\$1 million

You or your parent can gift \$12K a year. If the laws change in the future, make sure your parents gift to help avoid paying hefty estate taxes.



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