

Will vs Revocable Family Trust?

What is a Will? A Will is a formal letter you write to the probate judge.

If I have a Will, does my estate still have to go to probate?

Yes, a Will is a letter you write to the probate judge identifying yourself and listing what property you own and who should get it when you die. The transfer of property takes place under the supervision of the probate court.

What is a Revocable Family Trust ?

A Revocable Family Trust is a contract that creates an entity to hold assets for the benefit of someone, and will help avoid probate. This is the most significant and valuable feature of a Revocable Family Trust.

Remember - probate is a means to transfer ownership of property.

Once a person dies, that person can no longer transfer ownership of property titled in his name. Probate is the legal procedure for transferring title to the decedent's property to the person entitled to it.

So, why is probate bad for me?

If a person dies owning property, a court will supervise the transfer of that property to those people named in his Will. This takes time and money.

The actual transfer of title to the decedent's property is carried out under the court's supervision by a person designated in the Will as the executor of the estate. If a person dies without a Will, the court must appoint an administrator to carry out the transfer of the decedent's property. An executor or administrator is known as a personal representative.

The personal representative has the responsibility to perform the following:

1. Locate, inventory, and appraise all of the assets of the decedent.
2. Make final payment to all of the decedent's creditors.
3. Prepare and file any federal and state death tax returns.
4. Distribute the assets of the decedent's estate according to the decedent's Will or according to state law.

The personal representative will almost always hire an attorney to perform this work on his behalf. The attorneys [and personal representatives] collect their fees from the estate for these services. The amount of legal fees, depending upon the state, is either a fixed percentage of the estate or is based upon what a judge determines to be a reasonable fee.

The reason that most people do not want their estate to go through probate is that this process is expensive, time consuming, and inconvenient.

Attorney fees may range from 2 percent to 10 percent of the gross value of the estate. Normally, fees are based on a percentage of the actual estate and average 5 percent. Other fees and costs include Michigan probate inventory fees, probate court costs, personal representative's fee, asset appraisal fees, etc.

Second, attorneys rarely feel the same sense of urgency about completing the probate that is felt by the decedent's spouse and children.

While the decedent's family wishes to get on with things as quickly as possible, the attorney for the estate is often busy handling other matters and the time period for completing the probate may take from two to five years, but the time period generally depends on a number of factors such as the size of the estate, the length of time taken to locate and validate the will, the length of time taken to appoint an administrator in the absence of a will, and the length of time taken to find and notify all beneficiaries. If the will is then contested, probate can go on for even longer until matters have been resolved, and so the process could end up taking years.

Probate causes significant stress and frustration for the survivors, and avoiding the process is a legitimate planning concern.

How does a Revocable Family Trust help?

It allows you to avoid probate while managing your own estate in the same manner as you currently do.

The attractive feature of a Revocable Family Trust is that it survives the maker - when you die, the trust lives on. Therefore, if all of your assets are in the trust, there is nothing for the probate court to do when you die. That means that you died owning nothing - because you transferred all of your assets to your trust while you were alive.

By executing the Revocable Family Trust, you are creating an entity to accept whatever you choose to place in trust, for your own benefit during your life, then, after your death, for the benefit of your loved ones.

The actual trust contract may never be seen by anyone other than you and your trustees - it is a private document. Using your wishes and desires [stated in the trust document], your successor trustee will make sure that your estate will be distributed as you desired.

You may wish to have your property go to your spouse, then, after your spouse's death, to your children or grandchildren. Depending upon your desires, your trust will include the necessary provisions to ensure that your wishes are carried out. Your Revocable Family Trust will enable your designated successor trustee to carry out your wishes without the costs and time associated with probate.

The trust owns your property and you own the trust.

How will my Revocable Family Trust avoid probate?

Because probate is the process of the court's supervising the distribution of your estate after your death, probate is necessary if you die owning property.

The answer - don't own property when you die - transfer it to your trust while you are alive.

Important to some people.

Probate records are public records and are generally available for anyone to see or copy.

Revocable Family Trust documents and transactions are private and not available to the public.

Who can be a trustee?

Normally, the settlor [maker] of the trust is the trustee.

You may wish to select a professional trustee to manage your assets in trust, but a professional trustee, such as a bank, trust company or title company, is not required by law. Professional trustees can be very costly!

What are settlors, trustees, successor trustees and beneficiaries?

Whoever creates the Revocable Family Trust is the settlor -with a husband- wife trust, both are settlors.

Settlors are normally the trustees. That is, you will [continue to] manage your assets and affairs as always.

Settlors are normally the lifetime beneficiaries.

A successor trustee is the person who manages your affairs after the last of the settlors dies and distributes your assets to the successor beneficiaries [your children, your grandchildren, etc.].

Funding the trust

For the Will to be effective in eliminating probate, it is essential that you fund your trust.

Funding your trust is the process of transferring your assets from you to your trust. To do this, you physically change the titles of your assets from your individual name (or joint names, if married) to the name of your trust. For assets you may not want to transfer to the trust, you can change most beneficiary designations to your trust.

Any property that has not been transferred into the trust will be subject to probate, defeating the purpose of creating the trust in the first place. An amazing number of people go to the trouble and expense of forming a Revocable Family Trust and then fail to complete the work necessary to fund it.

For real estate, the change in title is accomplished by executing and recording a deed to the property.

Bank accounts and brokerage accounts can be transferred by simply changing the name on the accounts to reflect the trust as the new owner.

Shares of stock and bonds in registered form are changed by notifying the transfer agent for the issuing company and requesting that the certificates be reissued in the name of the trust.

Stock in a family owned corporation can be changed by endorsing the old stock certificate to the trust and having the corporation issue a new certificate to the trust.

Other types of property can be transferred by a simple written declaration called an assignment.

Contact your banks and other institutions and ask them what they need for you to do to re-name / transfer all of your accounts into your trust.

Some institutions will want to see proof that your trust exists. To satisfy them, you provide them with a copy of your certificate of trust. This is a shortened version of your trust that verifies your trust's existence, explains the powers given to the trustee and identifies the trustees, but it does not reveal any information about your assets, your beneficiaries and their inheritances.

Make sure you transfer ALL of your assets into the trust [or change beneficiary designations to the trust] so that when you die, a procedure in probate court will not be required [that is, when you die, you should own nothing - your trust should own

everything].

Note - your Revocable Family Trust uses your social security number just like you do.

What is a Pour Over Will?

If you meticulously transfer all of your assets into your trust, there will be no probate when you die.

But, if you neglect to transfer some assets into your trust, you should have a special type of Will called a Pour Over Will that will direct the probate judge to transfer all of your estate property into your trust.

This probate process, of course, will cost lots of money and take lots of time. It kind of negates the whole rationale for having a Revocable Family Trust!

Will my trust help me avoid taxes?

No.

Can I modify the trust?

You can modify the trust provisions any time you want up until when you die.

Can I revoke or cancel the trust?

Yes, you can cancel the trust any time before you die. Just make sure you transfer all of the property back into individual names.

NOT LEGAL ADVICE

This reference does not attempt to give legal advice. Wills and trusts are creatures of state law. Study and research the laws of YOUR state before trying to create your own will or trust, or better yet, consult a local estate planning attorney.

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