

WILLS and TRUSTS

Wyoming law permits any person who is 18 years or older and who is mentally competent, to make a Last Will and Testament to dispose of his or her property upon death. The will must be signed in the presence of two witnesses. The person signing the will is referred to as the testator (male) or testatrix (female).

There are several advantages in having a Last Will and Testament. The most important aspect of a Last Will and Testament is that you determine to whom your assets will be distributed upon death. If you fail to make a Last Will and Testament, your estate will be distributed in accordance with the laws of intestate succession as prescribed by the Wyoming Legislature. You may provide for a testamentary trust for those beneficiaries who may not be able to handle the property they might inherit through your will. This is particularly useful when minor children are your intended beneficiaries.

In your Last Will and Testament you may name the person who will handle your affairs and your property upon your death. That person is referred to as the personal representative. You may provide for very broad authority on the part of the personal representative or you may restrict the personal representative's powers. Additionally, you may waive the requirement that the personal representative post a bond for the faithful performance of his or her duties in handling the affairs of your estate.

In your Last Will and Testament you may name a guardian and conservator for children or other minor beneficiaries who would receive property from your estate. The guardian is the person who is entrusted with the care and personal needs of the minor beneficiary or other incompetent person. The conservator is the person designated to handle the property that is entrusted to the conservator during the beneficiaries' minority or other incompetence.

Your will also provides a means by which you may name charitable beneficiaries. If you die without a will or a trust there can be no distribution of any part of your estate to a charitable cause or organization that you may have intended to share your remaining property with upon your death.

Finally, a Last Will and Testament is revocable. Because it does not become effective until the time of death, you may change it at any time.

LIVING OR REVOCABLE TRUSTS

Rather than distributing your property under the terms of a Last Will and Testament, you may want to consider using a trust. There are a number of different types of trusts but the most commonly used is what is referred to as the Living Trust or revocable trust. In forming a Living Trust you will actually transfer all of your assets or the bulk of your assets to the trust. The trust instrument will name a trustee who is generally the person creating the trust during his or her lifetime. The trust will name successor trustees who will act in the event of the incapacity of the person making the trust or upon death of the person making the trust.

The creation of a Living Trust does not avoid the need for a Last Will and Testament. Upon creation of a Living Trust a person will also execute what is known as a pour-over will which simply states that any assets remaining will be distributed to the trust executed during your lifetime.

There are a number of significant advantages that a Living Trust can have over a Last Will and Testament. First, and perhaps most important, is that a trust will generally avoid the requirement of probate and the use of probate court.

A typical Last Will and Testament will take approximately 6 months to administer through probate court. The most significant cause of delay is that notice of probate of a Last Will and Testament must be published in the newspaper for a period of 3 weeks. The estate will remain open for at least 3 months following the date of first publication to allow creditors of the deceased to file claims with the probate court. For small estates of less than \$200,000 value a summary procedure is available for small estates which allows administration to be completed in 2-3 months.

The costs of probating a Last Will and Testament are essentially eliminated with a trust. These costs include the filing fee that must be paid upon filing of a petition for probate, the costs of publication in a newspaper of general circulation as previously mentioned, an appraisal fee paid to the clerk of court based upon the value of the probate estate, and the attorney's commission and personal representative's commission which by Wyoming statute are based upon a sliding percentage scale starting at 10% of the first \$1,000 of value of the probate estate and decreasing to 2% of the value of the probate estate that exceeds \$20,000.

Another advantage of the Living Trust is that it is more easily amended than a Last Will and Testament. Like a will, the Living Trust may be changed at any time or revoked in its entirety.

A Living Trust is private in nature. No document is filed with the probate court which would be available to the general public. In the probate of a Last Will and Testament, a complete inventory and appraisal of estate assets is filed with the probate court and is available for public viewing. No publication notice is required for the administration of a Living Trust.

As with a will, a person making a Living Trust can dispose of his property to whichever persons he or she chooses. Because the Living Trust is revocable and is not considered to be a present gift of the property to the beneficiaries, Federal Gift Tax liability is eliminated. The Internal Revenue Code also provides that there shall be no separate income tax liability for a Living Trust and the person creating the trust reports income tax just as if a trust did not exist.

COMPARATIVE COSTS

The initial preparation and cost of a Living Trust is more expensive than that of a Last Will and Testament. However, the total cost, after distribution of the estate assets, can make the Living Trust a more economical alternative. The costs involved in each estate can vary greatly

depending upon the complexity of the assets involved, the fluctuations and values that may occur over time and, for large estates, the potential estate tax liabilities that may be incurred upon death.

As an illustration of a comparison of costs of a will and a trust, assume a simple estate where the total value of the assets is \$150,000.00. The typical expenses incurred for preparation and probate of a Last Will and Testament might be as follows:

Execution of Last Will and Testament and attendant documents	\$750.00
Attorney's Commission	\$3,350.00
Personal Representative's Commission	\$3,350.00
Publication Costs	\$750.00
Appraisal Fees	\$1,500.00
Court filing fees and other expenses	\$600.00
Total Costs	\$10,300.00

The total expense of a Living Trust for a simple estate with assets of \$150,000 might appear as follows:

Execution of simple Living Trust and attendant documents	\$1,750.00
Appraisals (establishing tax basis upon death)	\$1,500.00
Fees and expenses upon final distribution	\$1,200.00
Total Costs	\$4,450.00

Although the up-front costs of the Living Trust are more expensive than for the Last Will and Testament, the overall costs to the beneficiaries are much less. Because several of the probate expenses are based upon the value of the estate, the economical advantages of a Living Trust increase dramatically as the value of the estate increases.

YOUR ESTATE PLAN

This article discusses only two aspects of your potential estate plan. Your estate plan should be tailored to meet your needs as well as your desires. In addition to having a will or a trust that disposes of your assets, you should also consider a durable power of attorney, a health care directive, and the advisability of retaining property in joint ownership.