Keeping the Golden Years Golden

Wills vs. Trusts; Can Probate be Avoided?

Essential Legal Tools to help navigate the “Golden Years”
Last Will and Testament

Last Will and Testament vs. Laws of Intestacy
Statute of Wills
The Contents of a Last Will and Testament
Does a Last Will and Testament help avoid Probate?
Aretha Franklin's Lack of a Will Could Cause Huge Problems

Franklin, who died August 16, 2018, at age 76, left behind four sons, but no guidance on how to distribute her reported $80 million estate. Even if the "Queen of Soul" had wanted her estate to go solely to her children, by not having a will or trust, her estate will have to go through a long public probate process, which will likely cost her estate considerable money. Her eldest son reportedly has special needs, which presents other potential complications. By not having a will, Franklin has opened her estate up to potential challenges that could drag out the probate process.
Statute of Wills

The **Statute of Wills** (32 Hen. 8, c. 1 – enacted in 1540) was an Act of the Parliament of England. Specifically, most jurisdictions still require that a will must be in writing, signed by the testator (the person making the will) and witnessed by at least two other persons.
Does a Last Will and Testament help avoid probate?

1. Last Will and Testament REQUIRES probate

2. Probate ONLY addresses solely owned assets – assets that have joint owners or named beneficiaries are NOT subject to probate

3. Probate allows for the orderly disposition of solely owned assets after death and provides court oversight and supervision to ensure your wishes are followed

4. Even if you have no assets to be probated, tax purposes only administration may still be required

5. The Connecticut estate tax exemption is currently $3.6 Million and will increase to $11.4 Million in 2020
Contents of Last Will & Testament

LAW
Connecticut General Statutes
Chapter 802a – Wills: Execution and Construction

AGE
Anyone who is at least 18 years old and of SOUND MIND

REQUIREMENTS: 1. Must be in writing
   • 2. Must be signed by Creator
   • 3. Must be witnessed by two disinterested people

REVOCATION
Burning, cancelling, tearing, or obliterating the will; By SIGNING a subsequent will (which often says all former wills are revoked)
WHAT IF?

- Divorce – Legal Separation - Remarriage
- Prior Death of Spouse – Death of Beneficiary
- If Asset No Longer Exists?
- Oral Wills Valid or Not?
- Handwritten Will Valid or Not?
- Out of State Will Valid or Not?
- Can Beneficiary Be a Witness?
- What If It Is Lost?
If you die without a will, and have a surviving spouse and children of that marriage

- Your spouse will receive the first $100,000, and the balance will be split 50% to your spouse and 50% to your children divided equally.
- What if your children are minors?
- What if your children are applying for financial aid?

If you die without a will, this is your second marriage, and you have children of a previous marriage

- Your spouse receives 50%, and your children split 50%
- What if your spouse is in a nursing home?
- What if you have an adult disabled child?
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1. Living Trusts vs. Testamentary Trusts

2. Revocable Trusts vs. Irrevocable Trusts

3. Trusts with a Specific Purpose:
   - a. Tax trusts
   - b. Asset protection trusts
   - c. Special needs trusts
   - d. Spendthrift trusts
A trust that becomes effective during the grantor's lifetime is called a "living trust" or an "inter-vivos trust."

A trust that is created under a Last Will and Testament is called a "testamentary trust." A testamentary trust, by definition, can only become effective after the testator's death because the Last Will and Testament does not become effective until that event occurs.
A revocable trust can be amended, revoked, terminated or changed at any time by the grantor.

An irrevocable trust cannot be amended, revoked, terminated or changed by the grantor or anyone else once it becomes effective.
WHY an irrevocable trust?

One common reason is to satisfy a property settlement as a result of a divorce or some other court decree. Many property settlements mandate that certain property be placed in trust, especially when minor children are the intended beneficiaries.

Many elderly persons who are concerned about the high cost of nursing homes transfer their property to an irrevocable trust before they apply for Medicaid (Title XIX) benefits.

Many high-net-worth individuals also use irrevocable trusts to protect their property from the claims of creditors.

For the rich and famous, an irrevocable living trust is often used to avoid federal estate taxes.
**TRUST**

1. Can be established and funded during a person’s lifetime
2. Can manage assets during a person’s lifetime, during incompetency and after their death
3. Can help avoid probate but still requires administration, accounting and tax filings
4. Can be costly to establish; costly to amend; costly to maintain
5. May still require Tax Purposes Only probate and payment of probate fees

**LAST WILL**

1. Only springs into effect AFTER death and once admitted to probate court
2. Allows for the orderly management and distribution of assets after death
3. Requires probate but once finalized and assets distributed, probate ends
4. Is not costly to establish; when probated, will require payment of statutory probate fee
Is probate the evil empire?
Can you “trust” a TRUST?
Tools of the Trade that help keep the Golden Years Golden
Important Documents and Considerations for Elder Care Planning

• 1. Last Will and Testament is an important “Safety Net” and is a testament of your wishes after your death, but with proper estate planning by an elder law attorney, it may never be submitted to probate

• 2. Trust can be an effective planning tool for Medicaid planning

• 3. Testamentary Trust (contained within a Last Will and Testament) can be extremely helpful to manage assets for minor disabled or younger beneficiaries

• 4. An updated Power of Attorney is crucial for management of financial affairs if you are unavailable or incapacitated

• 5. An Advance Directives Package with an Appointment of Health Care Representative, Document of Anatomical Gift, Designation of Conservator and Living Will are extremely important for you AND your family if you are hospitalized
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Elder Law; Medicaid; Wills and Trusts; Probate; Conservatorships; Real Estate