

WILLS VS. REVOCABLE LIVING TRUSTS: WHICH IS THE APPROPRIATE ESTATE PLANNING TOOL?

Both Wills and Revocable Living Trusts are effective estate planning tools when set up and maintained properly.

Wills

Wills are effective estate planning tools and can be customized to fit an individual client's needs. Wills by themselves are "tax neutral" which means that tax saving provisions can be built into the Will but the Will itself will not save on estate taxes. Simple Wills are generally less expensive than Revocable Living Trust packages. Wills can also specify which beneficiary gets what specific personal property by referring to a tangible personal property list that is referenced in the Will.

A downside of Wills is that they have to be probated upon the client's death. It is commonly thought that probates are expensive. However, Washington State has a very streamlined and efficient probate system that is considered one of the best in the country. If an executor chooses to do a Notice to Creditors procedure through the probate, the two year creditors claim period in which creditors can bring claims against a decedent's estate is cut down to only four months.

Additionally, Washington State attorneys are not allowed to take a percentage of the estate as payment for probate services and must bill hourly, which generally is less expensive for the estate than for those estates in which the attorneys can bill a percentage (CA and NY being the most notorious examples).

Revocable Living Trusts

Revocable Living Trusts are an effective way to avoid probate, as long as they are funded correctly. This keeps the Trust, and its property, out of the court system, so there is in theory more privacy with a Revocable Living Trust than a Will. Keep in mind, however, that Trusts are only as good as the property they hold. If a client has transferred almost all of his or her property into the trust (motor vehicles and retirement accounts such as IRA/401K being the major exceptions) the client can avoid probate and the costs and delays associated with probate. Like Wills, Trusts are tax neutral which means that the tax savings provisions are built into the Trusts. Estate tax wise, Revocable Living Trusts are the same as Wills.

Revocable Living Trusts are convenient in that if the Trustee of the Trust becomes disabled during life and can no longer manage affairs, a substitute Trustee can be appointed.

On the downside, Revocable Living Trust packages can be substantially more expensive than Wills and the client has the extra burden of funding the Trust with his or her property, which can be time-consuming and can incur more attorney fees. If the clients are married and want to leave his and her property to the other spouse in a Special Needs Trust, a Revocable Living Trust is not an appropriate estate planning vehicle and a Will containing a Special Needs Trust should be used. If the Special Needs Trust found in the Revocable Living Trust is for someone other than a spouse (e.g. child) there is not the same problem.

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