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ATTORNEYS AND COUNSELORS

## *Will or Trust...What Do I need?*

by Katherine B. Albrecht

Protecting your loved ones, yourself, and your assets is vital whether you are single or married, have a growing family, or have adult children. The best way to do this is to have the necessary estate planning documents drawn up. But how do you know if you need a Will, Trust, or both?

A Will is a legal document that lays out your wishes when it comes to distributing your assets *after* your death. Its provisions take effect only after the Will is accepted by the probate court after your death. The Will disposes of assets titled in your sole name at your death. It does not dispose of assets that you owned jointly with some other living person, nor does it dispose of assets for which you have designated a living beneficiary, such as life insurance.

A Will can dispose of any type of assets, regardless of value. You can name beneficiaries and lay out specific instructions on what they will receive and when.

Another very important job of a Will is nominating legal guardians over your children if they are still minors when you pass, something a Trust cannot do. In a Will you can nominate a personal representative who is in charge of collecting your assets and distributing them according to the provisions of your Will after you die.

If you die without a Will, you have no say about who will raise your minor children, who will be in charge of collecting and distributing your assets, and how those assets will be distributed. In Michigan, if you die without a Will and are married with children, your estate is divided between both your surviving spouse and your children by law. Amounts passing to your children will be distributed to them at age 18 whether they are ready to handle those assets or not. Until that age, the assets for a child are managed by a court appointed conservator.

There are many types of Trusts, but the one that applies to most

people is a Revocable Living Trust. This type of Trust provides a way to manage your assets while you are living and, like a Will, governs how those assets will be distributed at your death. You can modify or revoke a Revocable Living Trust at any time during your lifetime.

Some of the assets you could transfer to your Trust during your lifetime would be:

- Your home or investment real estate
- Bank accounts
- Stocks, bonds, and money market accounts
- Life insurance policies
- Business interests

A Revocable Living Trust generally provides that during your lifetime, the Trust assets are used for your benefit. You are the Trustee who manages the assets while you are alive. In the Trust Agreement you name someone as the Successor Trustee to continue to manage the assets

when you are no longer able to do so. The Successor Trustee can be a trusted family member or friend, or a professional such as a bank, a lawyer, or an accountant. Having your assets in a Trust can become important if you become incapacitated and need someone to make sure you are taken care of. A Will cannot do this because it only takes effect after your death.

The Trust also provides where your assets go and when your beneficiaries will have access to them after your death, and who will manage those assets for your beneficiaries until the time you want the beneficiary to have the assets. This happens without court involvement. Unlike a Will that becomes public information, Trust provisions are private.

Some of the other types of Trusts are Irrevocable Trusts, Asset Protection Trusts, Charitable

Trusts, Special Needs Trusts, and more.

If you only have a Will when you die, or no Will at all, your family will have to go through the probate administration process in order to gain control over your assets and distribute them. This can be a time-consuming process that includes proving in court that the Will is valid, identifying property and having it appraised, paying taxes and other debts, and distributing other properties as the Will provides.

Creating a Revocable Living Trust and transferring your assets to yourself as Trustee of that Trust can help you and your family avoid or minimize the probate process in the event of your incapacity or death. It provides more flexibility than a Will, and preserves your privacy. Generally, if you have a Revocable Living Trust, you also

will need a Will that “pours over” to the Trust any assets you did not transfer to the Trust during your lifetime.

Estate planning varies from person to person and family to family since everyone has different situations. The best thing to do is to sit down with an experienced and trusted Estate Planning Attorney and lay out everything so they can advise you with the best course of planning and action to fully protect you, your loved ones, and your assets. ♦

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