



Sigma Summaries

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Wills, Probate and Revocable Trusts

The following Sigma Summary is the first in a series of articles dealing with a broad range of financial and estate planning issues. Some of the topics that will be reviewed in future Sigma Summaries will include gift and estate taxation, tax minimization strategies, insurance and annuities. As we present this information, keep in mind that we are not tax or insurance specialists and we defer to these other professionals when an action step is required. So, why should clients expect that we could add value for them in these areas? The answer is that as we manage our clients' portfolios, we recognize the interdependency among these various disciplines.

Wills

A will is not legally recognized until it is probated, an action that takes affect at one's death. Issues that are often spelled out in a will include, but are not limited to, the following:

- Who shall receive a portion of the estate?
- How much will each heir receive?
- Who will be responsible for the administrative duties in settling the estate?

If a will is not established, the state of residency of the deceased will determine how one's property is distributed. Four such examples are highlighted below:

- If one is **married and has children**, most states will award one-third to one-half of the estate to the surviving spouse and allow the remainder of the estate to go to the children, regardless of age.
- If one is **married yet has no children**, most states will award one-third to three-fourths of the estate to the surviving spouse and allow the remainder of the estate to the decedent's parent(s), if alive. If both parents are deceased, many states will allocate this remainder among the decedent's brothers and sisters.
- If one is **single and has children**, the entire estate goes to the children. Without proper planning, however, the children may be free to spend the money in a manner different from the wishes of the deceased parent.
- Finally, if one is **single with no children**, most states will award the decedent's parent(s). If both parents are deceased, many states will allocate the property among the brothers and sisters of the deceased.

A will typically names a guardian for minor children and an executor to handle the administration of an estate. A will may also be useful for the disposition of any miscellaneous assets that were not titled in the name of a trust.

While most individuals should consider having a will, a will is typically only the beginning of a well thought out estate plan. Wills can, and should be, continually revised and updated as circumstances warrant.

Probate

To insure that the wishes of the decedent's are properly carried out as outlined in the will, and that the estate is properly administered according to law, estates are subject to "Probate". Probate is the legal process whereby a special court oversees that:

- All of the assets within an estate are identified and appraised.
- All outstanding debts owed by the estate are paid.
- Estate taxes and other expenses incurred in the settlement of the estate are paid.
- The remaining assets are distributed as outlined in the will.

There are several reasons why the probate process is viewed in a negative context. Three reasons often cited are highlighted below

- The probate process can be overwhelming and consume a lot of **time and energy**, especially for those that are not familiar with the process.
- Many **costs** are associated with Probate, including court costs, legal fees, appraisal and accounting fees, and administrative expenses incurred by the representative of the estate.
- Estates subject to Probate may **publicly disclose** some of the assets subject to probate. This publicity is often unwanted, particularly by larger estates.

Assets that are properly titled can avoid the scrutiny of the Probate Court. Examples are listed below:

- Assets titled in the name of one's living trust.
- Property jointly owned with rights of survivorship.
- Life insurance proceeds payable outside of the estate.
- Many retirement plans, such as IRA's, 401(k)'s, and profit-sharing plans, assuming that the beneficiary designation is properly completed.

Revocable Trust

A living trust functions much like a will in that it can instruct how your estate is settled at your death. It differs, however, in that assets titled in the name of a Living Trust are not subject to Probate at one's death.

To establish a Revocable (or Living) Trust, one must create a document listing the following:

The Grantor: the individual who transfers assets to the trust and dictates the terms of the trust.

Trust Property: all of the assets that are to be titled in the name of the trust.

Trustees: one or more individuals and/or institutions that have been given the authority and responsibility to see that the assets in the trust are managed in accordance with the terms defined in the trust document.

Beneficiaries: anyone who receives an economic benefit from the assets in the trust. Beneficiaries typically are described as income or principal beneficiaries.

Successor Trustee: Individual(s) and/or institution(s) who are responsible for the management of the assets in the trust at the time of death of the trustees.

While not everyone may be in need of a revocable trust, the relative ease in establishing a trust combined with the relatively modest expense often associated with the drafting of the document provides a compelling case for individuals with sizable estates to consider a revocable trust as a cornerstone of their financial plan. The trust reduces the likelihood that one's estate will be subjected to the probate process. Further, a trust may allow for a more structured manner for the disposition of one's assets. To put this more succinctly, use of a trust is about getting your assets to the right people in the right way.

For example, this may be particularly important for parents concerned about leaving sizable assets to their children. Trusts can be used to govern how money is spent, the frequency of payments, when heirs are entitled to receive assets, etc.

Other reasons for using trusts include protecting assets from creditors and ensuring that assets left to a second spouse ultimately get passed along to whomever you wish; for instance your children, not his or hers. Some people don't like trusts because they think they lose control. The fact of the matter is they are a mechanism for gaining control, not losing it.

Please note that a revocable trust, by itself, only reduces estate taxes to a certain point in larger estates. To minimize and/or avoid estate taxes in larger estates, additional estate planning is in order.

There are two other documents that are typically included in a basic estate plan. They are the Durable Power of Attorney and the Living Will.

Durable Power of Attorney

A Durable Power of Attorney is a document, granting another person either limited or unlimited authority to act on the individual's behalf. While this authority can be granted for any number of reasons, in the context of estate planning, an individual will often grant a spouse, trusted family member, friend, or institution a Durable Power of Attorney to be used in the event of disability and/or incompetence. Matters dealing with taxes, retirement accounts, and ongoing investment management issues are but a few of the reasons why this contingency document is so highly recommended along with the establishment of a will and a trust.

Living Wills (and Other Advanced Medical Directives)

There are a number of documents that deal with complicated medical, legal and ethical issues that may confront us as we near the end of our lives. Living Wills and other Advanced Medical Directives allow individuals to make fundamental choices on the type of care and treatment that should or should not be pursued in the event of incapacitation.

There has been some talk in Congress about the possibility of reducing or eliminating estate taxes. If this were to occur, there are still other reasons why having an up-to-date estate plan is very important. For example, it is important to assure that financial and medical decisions are taken care of if you become incapacitated. A sound estate plan also allows you to specify who gets what and when upon your death.

Feel free to give us a call if you would like to discuss any of these issues in greater detail.

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