



Wills and Trusts

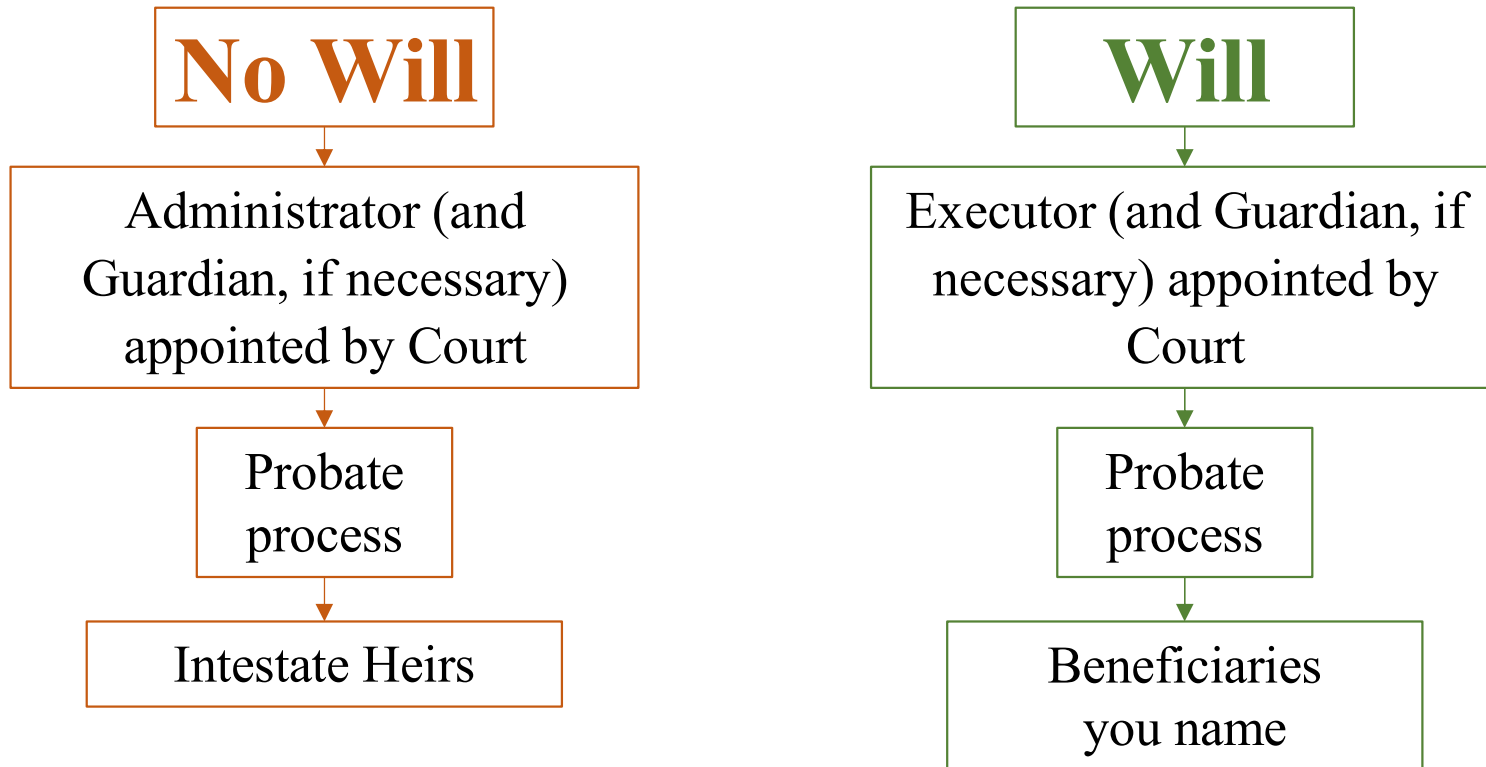
**Presented on September 27, 2022, at Sea Country Senior and Community Center
Presented by Amy Fenelli Ciftcikara, Esq. of the Fenelli Law Firm**



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What is Probate?

- Probate is the court-supervised process of distributing a decedent's assets after death.
- Probate happens if you have No Will or only a Will, and your gross assets exceed the threshold (currently \$184,500).



Estimated Cost of a \$1,000,000 (FMV) Probate Estate

Executor/Administrator's Fees

4% of the first \$100,000=	\$4,000
3% of the second \$100,000=	\$3,000
<u>2% of the remaining \$800,000=</u>	<u>\$16,000</u>
Total Executor Fees=	\$23,000

Attorney's Fees

4% of the first \$100,000=	\$4,000
3% of the second \$100,000=	\$3,000
<u>2% of the remaining \$800,000=</u>	<u>\$16,000</u>
Total Attorneys Fees=	\$23,000

Other Fees

Filing Fees for Petitions=	\$1,200
Probate Referee fee (0.1%)=	\$1,000
<u>Bond, Notice and Publication (approx.)=</u>	<u>\$5,000</u>
Total Other Fees=	\$7,200

TOTAL FEES

\$53,200

Probate Time

At least 1.5 years

*depends on County

What can you do to avoid a Probate?

- **Pay-on-death/transfer-on-death designations**
- **Beneficiary designations**
- **Titling (e.g., joint tenancy) - Drawbacks:**
 - Possible gift tax.
 - May cause issues between children.
 - Exposes the property to sale by child, child's creditors, and child's divorce.
 - Child may lose step-up in cost basis resulting in capital gain.
- **Trust(s)**

Revocable Living Trust

- **A Trust is a legal entity that owns your property.**
- **Why is a Trust important?**
- **Assets in a Trust are not subject to Probate.**
 - **A Trust can be structured to hold and protect assets for your beneficiaries.**
 - **Tax Planning to avoid estate taxes.**
 - **Trustee is appointed to manage, administer, and distribute assets.**

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graph TD; EP(Estate Planning) --- LWT(Last Will and Testament); EP --- RLTR(Revocable Living Trust); EP --- DPAHC(Durable Power of Attorney for Health Care); EP --- AC(Appointment of Conservator); EP --- DPAF(Durable Power of Attorney for Finances);
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Estate Planning

Last Will and Testament
-Effective after you pass away

Revocable Living Trust
-Effective during your lifetime and after you pass away

Durable Power of Attorney for Health Care
-Effective during your lifetime
-Court involvement not required

Appointment of Conservator
-Effective during lifetime if you are incapacitated
-Court involvement required

Durable Power of Attorney for Finances
-Effective during your lifetime
-Court involvement not required

Types of Trusts

- **Revocable Trust – Can be changed at anytime by the Grantor (creator). A Revocable Trust is usually the main component of an estate plan. Usually becomes irrevocable upon the Grantor’s death.**
- **Irrevocable Trust – Cannot be changed as easily.**
 - Can be modified or terminated during Grantor’s lifetime if the Grantor and all beneficiaries agree, and after Grantor’s death with court approval.
 - Removes assets from your estate as you no longer control the asset.
 - Compressed tax rates - highest rate at \$13,451 of income.
 - Separate Tax returns
 - Trust Protector

Benefits of Revocable Trust

- **If all assets are titled to your Trust, a Trust avoids conservatorship at incapacity and probate at death.**
 - Assets are distributed without court involvement unless there are objections.
 - If Grantor/Trustee becomes incapacitated, a named successor Trustee takes over management of the assets without court involvement.
 - After death – no probate. You can dictate the distribution method for the assets which may protect beneficiary from himself/herself, creditors, predators, divorce, or from losing government benefits.
 - Privacy - In general, Trust provisions are not made public.

Drawbacks of Revocable Living Trust

- **Cost to set up.**
- **No oversight.**
- **Trust Administration at death, but typically less than probate.**

Funding the Trust

An Essential Step

- **“Funding” a trust means assets must be re- titled from your name as an individual to your name as Trustee.**
- **If you do not fund the Trust, your heirs may have to do a probate or other petition with the Court AND a Trust administration. This wastes time, money, and can be easily avoided.**
- **How to transfer title is different for each type of asset.**

Real Property, Timeshares, and Co-ops

- **Real Property** – Title to your home should be in your Trust. Your attorney can advise the best method to transfer to avoid real property tax reassessment and capital gains.
- **Rental Properties** – Consider creating a corporate entity to hold these properties to provide additional protections for the Trust and beneficiaries. Interest in the entity would be titled to the Trust.
- **Timeshare Interests** – Title to Trust. Each Timeshare Company is unique.
- **Co-op** – Title to Trust. An Attorney Opinion Letter may be needed to re-issue Co-op certificate.

Bank and Brokerage Accounts

- Should be retitled in your name as Trustee of the trust.
- If an account cannot be titled to the Trust, it should have a pay-on-death (POD) or transfer-on-death (TOD) beneficiary designation.
- Can name Co-Trustee as to one or more accounts.
- Household checking account.

Other Common Assets

- **Business interests** – Interest in sole proprietorship, corporation, professional corporation, limited liability company, and/or general or limited partnership should be issued or assigned to the Trust.
- **Safe Deposit Boxes** - Re-title in name of trust and/or add a joint owner.
- **Promissory Notes** – Sign assignment to trust.
- **Paper Savings Bonds** – Re-title in name of trust.
- **Cars and Vessels** – Assign to Trust or Pass free of probate using DMV Affidavit.
- **Vessels Documented by the U.S. Coast Guard** – Re-title in name of trust.
- **Mobile Homes** - Re-title in name of trust.
- **Tangible Personal Property** – Sign general assignment to trust. If you have specific items to be distributed, discuss it with your Attorney.

Notable Exceptions: Retirement Plans and Life Insurance

- **Retirement plans and life insurance** generally must be owned by an individual (except life insurance in an ILIT).
- You can name your trust as beneficiaries by properly executing and submitting a beneficiary designation form with the Retirement or Life Insurance Company. Discuss with your attorney the best way to handle the beneficiary designations.

What happens if assets are not in Trust?

- **Power of Attorney** – Agent can transfer assets to trust while Grantor is living.
- **Small Estate Affidavit** – Avoids probate for assets up to \$184,500 (for people passing away after 4/1/2022) in aggregate.
- **Heggstad/Ukkestad/Spousal Property Petitions** – Court petition process to avoid full probate at death.
- **Pour Over Will** – Pours over assets into the trust so they can be distributed according to the trust's terms. Requires a probate AND trust administration.

Gift and Estate Tax

- **Federal Gift Taxes** are due for any gifts over the annual exclusion (2022 is \$16,000). A Gift Tax Return needs to be filed.
- **Federal Estate Taxes** are due upon your passing if your estate is over the exemption (2022 is \$12,060,000). You may still want to file a return if the estate is under the exemption, discuss this with your Attorney.
- **State Estate Tax** may be due. California currently does not have an estate tax.
- **Types of gifts generally exempt from gift tax:**
 - Gifts to spouse and charities.
 - Gifts to any individual under the annual exclusion.
 - Direct payments for tuition or medical care for any individual.

Basis Adjustment – Step Up or Step Down

- **Joint Tenants** – partial adjustment at first joint tenant's death
- **Community Property** – full adjustment at first spouse's death
- **Solely Owned**
 - Gift during life –Basis is set at time of gift and reported on gift tax return
 - Inherit at death – Full step up or step down
- **From irrevocable trust** – no adjustment

Marital Sub-trusts:

- **A Trust** – Commonly referred to as Survivor’s Trust (Revocable during surviving spouse’s life).
- **B Trust** – Commonly referred to as Residual Trust, Bypass Trust, Credit Shelter Trust, and/or Exemption Trust. This Trust can hold up to deceased spouse’s Estate Tax Exclusion Amount (\$12,060,000 in 2022)
- **C Trust** – Also referred to as a QTIP Trust or Marital Trust. Used to control decedent’s property after death.

Sub-trust Considerations for Spouses – Simplicity vs Control

- **Sub-trust administration** – Allocate assets between sub- trusts, obtain tax ID number for irrevocable trust, and prepare Form 1041 annually for irrevocable trust.
- **Power of appointment** – Can give the surviving spouse (or another person) power to change sections of the Trust. This can be broad or limited, discuss this with your Attorney.
- **Allocation of assets** - Determined after the first death. Discuss this with your Attorney.

How do you want to distribute assets to your Children and Other Beneficiaries?

- **Outright**
- **At ages/stages:**
 - Distributions for health, education, maintenance, and support
 - Principal at specific ages
 - Amounts for specific purposes
 - Special Needs

Additional types of Trusts

- **Irrevocable Life Insurance Trusts (ILIT)**
- **Charitable Remainder Trusts (CRT, CRAT, CRUT)**
- **Grantor Retained Trusts (GRAT, GRUT)**
- **Qualified Personal Residence Trust (QPRT)**
- **Charitable Lead Trust (CLAT, CLUT)**
- **Irrevocable Trusts for Children/Grandchildren (Crummey Trusts)**
- **Intentionally Defective Grantor Trusts (IDGT)**



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