

South Seattle Community College

About Wills and Living Trusts

In the simplest form, a will is a written record of a person's intent with regard to the distribution of assets in his or her estate. Its use today has roots that extend beyond old English common law at least as far back in time as the ancient Egyptians. The basic concept is this: an individual can record directives about the disposition of his or her property, and these directives will be supported by the law, even after the person is deceased.

A will has a number of advantages and benefits. It is a relatively straightforward document, conceptually easy for most people to understand, and well-proven in the law. The will provides an ability to choose a personal representative (executor) to carry out one's wishes about the administration of the estate. A guardian can also be designated to care for children or the incompetent.

The will allows testators (persons making wills) to leave their property to such beneficiaries as they choose. In contrast, if persons die without a will (dying so-called "intestate"), the state makes decisions about where property will go. The will can provide for charitable gifts, such as a gift to establish a scholarship endowment at South Seattle Community College. Finally, for married persons leaving property to a spouse, it allows the testator to avoid estate taxes on that property.

The will has some disadvantages. It must undergo "probate" (approval by a court) and so is a public document. Persons desiring privacy won't find this appealing. All property in the will is subject to the expenses and administrative work associated with a probate process. A will can be inflexible, offering little ability to adapt to changing circumstances. In a related shortcoming, unless the will is used to establish a subsequent trust, its actions are limited to a short span of time – usually no more than a few years while the estate is being settled.

Like a will, a trust is a proven concept that is also well founded in the law. Basically, a trust is an arrangement whereby the legal title is held and property managed by a trusted, competent person (the "trustee") for the benefit of another (the "beneficiary"). The trust agreement can be used similarly to a will to provide for distribution of property after death.

Trusts can either be established during life (a "living trust") or after death by operation of either a will or living trust (a "testamentary trust"). Living trusts can either be revocable or irrevocable – in the case of a revocable trust, the person establishing the trust (the "grantor") can revoke, amend or terminate the trust up to the point of her death. Obviously, a testamentary trust is always irrevocable.

In the case of a living trust, the trust is established by an individual or couple as part of the estate planning process. Assets are placed in the trust, and a trust agreement establishes a set of rules for how the trustee will manage the trust and distribute assets or income after the grantor's death.

A revocable living trust has a number of advantages and benefits. Property in the trust avoids the administrative work and expenses of probate. This advantage can be especially important to a family that owns a vacation or retirement home in a second state – a circumstance that otherwise can lead to multiple probate processes. Even though the person who established the trust has deceased, his or her instructions can continue to control the trust assets for long after death (up to 150 years in the state of Washington). The terms of the trust can allow for protection of assets during the maturation of children or grandchildren and can provide instructions to deal with uncertain future events (such as birth, death, marriage, divorce, education, careers, good fortune and misfortune). The trust can provide for continuity of management of assets and can be used for the benefit of charity. Implementing a revocable trust during one's lifetime can allow time to "preview" how well the trust arrangements will function later.

There are some disadvantages to trusts. Establishing a trust requires time and expense. The grantor must be careful to place all significant assets in the trust and must be vigilant with regard to assets acquired in the future. If a corporate trustee (such as a bank) is used, there will be fees for management. A trust cannot be used to name a personal representative or a guardian for minor children. For that reason, it is often advisable to have a will in addition to a living trust – the will could also serve as a safety net in case assets somehow escape the trust.

The College encourages you to talk to your attorney about whether a will or living trust makes the most sense for your individual circumstances. And as you work on your estate plan, please consider including a charitable gift (a "bequest") to South Seattle Community College. Your gift could create a permanent legacy in the form of education and opportunity.

Please contact your attorney for advice about making a charitable bequest. A charitable gift planning officer is available to help you and your advisors develop ways that charitable gift opportunities, annuities and trusts could form part of your retirement or estate plan.

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