

WHICH ESTATE PLAN BEST FITS YOUR NEEDS?
A COMPARISON OF WILLS AND REVOCABLE LIVING TRUST DOCUMENTS AND
POST DEATH ADMINISTRATION ISSUES FOR EACH TYPE OF ESTATE PLAN

rev 1-06

WILLS

LIVING TRUSTS

<p>A. <u>Privacy.</u> A Will must be filed with the Court and mailed to all interested people (ex: People who would receive property without a Will). Probate requires an Inventory of assets owned as of your date of death, filed with the Court.</p>	<p>No documents to file with Court but also no Court supervision. Settling the trust estate still requires input, typically, from a lawyer and/or an accountant.</p>
<p>B. <u>Income Tax.</u> An estate has its own income tax return to file, called a 1041, which has flexibility in selecting the tax year. There are many potential advantages as the tax rates are lower. Beneficiaries of the Will receive a basis step-up on all assets, resulting in no capital gains to pay.</p>	<p>No income tax benefits or flexibility. Tax returns are filed under the creator's (Grantor's) social security number(s) during lifetime and at death, beneficiaries also receive a basis step-up on all assets. Trust will be taxed at the larger of trust or individual income tax rates.</p>
<p>C. <u>Federal Estate Tax (FET).</u> All probate property in an estate is subject to estate tax, which is only assessed on estates which exceed \$2,000,000.00 (2006-2008 figure; will increase to \$3.5 Million in 2009; thereafter phased out).</p>	<p>Identical to Estates. All properties passing through the Trust are subject to FET, again assuming the estate is \$2 million or greater in value as of date of death.</p>
<p>D. <u>Real Property Located Out of Wisconsin.</u> If you own real estate located outside of Wisconsin and if Wisconsin is where you are domiciled at your death, an ancillary (supplemental) probate proceeding would be required in each state where real property is located. In this case, one should most likely choose a Living Trust estate plan, to avoid the extra probate costs.</p>	<p>No separate proceeding is required, and the real estate is handled and is distributed under the terms of the Trust.</p>
<p>E. <u>Fees for Drafting.</u> Varies with complexity but usually fees for drafting Wills are much less than fees for drafting Living Trusts. At death, however, there will be fees associated with the probate administration (ex: Inventory filing fee (\$2.00 per thousand), Personal Rep. fee of 2% of the inventory value of the estate, attorney, and accountant fees). will vary between institutions.</p>	<p>Varies with complexity, however, typically the "up front" legal fees for drafting are significantly more costly than drafting Wills. Establishing Living Trusts, especially if there is tax planning involved to avoid or minimize federal or Wisconsin death tax, and fees for drafting will range between \$1,200.00 to \$3,000.00. After death, trust administration fees vary, but there is no established trustee fee and fees</p>
<p><u>Medical Assistance/Payment for Nursing Home.</u> Same. Assets in a Revocable Living Trust are available for long term nursing care, and are not protected simply by virtue of being in the Trust. If the Grantor can access the Trust assets, so can the nursing home.</p>	

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| F. <u>Disability During Lifetime.</u> A Durable Power of Attorney for financial affairs is recommended so a designated agent can handle your business in the event of disability or incapacity. | Successor (alternate) Trustee(s) will manage assets already placed in the Trust, but a Durable Power of Attorney document is still needed for assets not yet placed in Trust, and to appoint a Guardian. |
| G. <u>Funding Issues.</u> Once you die, your estate consists of whatever assets you own that are and subject to a probate administration. There is no funding under a Will. | Funding of the Trust, whether full or partial, can be lengthy cumbersome, and only assets which are part of the Trust at death will pass without a probate administration. A "Pourover Will" is still necessary to establish, along with the Trust. |
| I. <u>Time to Settle the Estate With a Will.</u> mandated time frames must be complied with in order to complete the probate process. Real estate, tax or creditor problems are also at issue here as potential problems in closing the estate in a timely fashion. Courts presume one (1) year from date of death, unless extended for good cause. | No specific statutory or other requirements, but settling and distributing the assets is within the Trustee's discretion once all assets have been located and all claims paid. Real estate, creditor, or tax problems may cause delays here, as well as in the probate administration. |
| J. <u>Accountability/Court Supervision.</u> All beneficiaries are entitled to receive the estate inventory and final accounting, listing all assets, income and expenses of the estate, and must sign a final receipt indicating satisfaction with the final accounting or be given a hearing date to object. | No Court supervision and although trust administrations are becoming more and more popular, there is no required accounting. Corporate Trustees (ex: a trust company) will prepare an accounting. |
| K. <u>Creditors.</u> Statutorily, creditors of an estate are given three months from the appointment of the Personal Representative in order to file a claim, or be barred from filing a claim. | No statutory or specific time for filing claims, except for the usual Statute of Limitations. |
| L. <u>Contestability.</u> Any Will can be challenged or contested for lack of testamentary capacity or undue influence. Objections must be made the Will is submitted to the Probate Court. | The Trust can be challenged or contested for the same reasons as Wills, and there is likewise no set time at which a creditor's claims are barred. No statutory "structure." |
| M. <u>Predictability of Process.</u> Probate administrations have been widely used and there is ample case and statutory law which is well established. | Trust termination proceedings are becoming more popular but since these termination proceedings are "new", the case law is less established and may not be established in unusual situations. |

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