

Wills, Trusts and Fiduciaries: The Foundations of Your Rock-Solid Estate Plan

Chances are, you haven't thought much about positioning your assets so they're ready to help the people you love after you're gone. Even if you have made some headway in this area, your plan for your estate is probably a little — and maybe a lot — out of date. Don't fret. Here's how you can get on track by focusing on just three main areas of estate planning: wills, trusts and fiduciaries.



This report was selected especially for you by Falkenberg-Poetz & Pidhirniak Wealth

Elite wealth management

Wills, trusts and fiduciaries: the foundations of your rock-solid estate plan



Key takeaways

- A will identifies precisely what you want to have happen to your assets and estate. Dying without a will means you have decided that the government knows what's best for you and your family.
- A living trust provides *privacy*. Those not inheriting need not be told who has inherited what, unless someone chooses to tell them.
- Review your estate plan every year or two and update it as needed based on what's changed since you put your solutions in place.

Among today's top business owners, family is paramount.

Certainly, you expect to use your wealth to take care of family in the here and now — health care, travel, college tuition and the like. But chances are you haven't thought nearly as much about positioning your assets so they're ready and able to help the people you love after you're gone. Even if you have made some headway in this area, your plan for your estate is probably a little — and maybe a lot — out of date.

If that describes your situation, don't fret. Even with many moving parts to your finances, you can get on track by focusing on just three main areas of estate planning: wills, trusts and fiduciaries.

Here's how to do it.

Where there's a will, there's a way

Everyone should have a will.

Got it? A will should be the basic foundation of every estate plan — the starting point for a well-conceived strategy to transfer assets at death.

A will identifies precisely what you want to have happen to your assets and estate. Dying without a will means you have decided that the government knows what's best for you and your family. In addition, dying without a will means you want to make the settling of your estate as difficult, as costly and as public as possible.

As with any decision, there are both positives and negatives to a will. That said, we strongly believe the benefits of creating a will far outweigh the drawbacks.

Advantages:

- You decide on the disposition of your hard-earned wealth.
- Taxes upon death are mitigated — especially when the will is part of a broader estate plan.
- You specify who the fiduciaries will be.

Disadvantages:

- You have to accept that one day — far in the future — you will die.
- There is a legal cost associated with creating a will and with estate planning.

Trust in trusts

The second component of a smart estate plan is often a trust. Specifically, a trust lets you transfer title of your assets to trustees for the benefit of the people you want to take care of — a.k.a. your selected beneficiaries. The trustee will carry out your wishes on behalf of your beneficiaries, in accordance with a trust document.

Trusts are ingenious. You can use them in all sorts of ways to transfer your wealth and determine how it's to be deployed. They also can prove to be very useful in shielding your assets from plaintiffs and creditors.

In crafting a trust, you are limited only by your own imagination, the ingenuity of your financial and legal advisors, and (of course) the law. As long as you do not establish a trust for an illegal purpose, you have an awful lot of leeway.

Types of trusts

Broadly speaking, there are two types of trusts: **living** (established while you are alive) and **testamentary** (created by your will after you've passed).

Living trusts

A living trust is becoming more and more popular to avoid the cost of probate. In the probate process, your representatives “prove” the validity of your will. The probate process also gives any creditors the opportunity to collect their due before your estate is passed to your heirs. There may be a long delay in settling your estate as it goes through probate. To add salt to the wound, probate can be costly.

A living trust, such as an alter-ego trust or a joint-partner trust, can avoid or mitigate the effects of probate. The assets in your living trust avoid probate at death and are instead distributed to your heirs according to your wishes.

Is a trust for you?

1. Are your beneficiaries unwilling or unable to handle the responsibilities of an outright gift (investing the assets, spending the gift wisely, etc.)? Yes No
2. Do you want to keep the amount and the ways your assets are distributed to heirs a secret? Yes No
3. Do you want to delay or restrict the ownership of the assets by the beneficiary? Yes No
4. Do you need to provide protection from your and/or your beneficiary's creditors and plaintiffs? Yes No
5. Do you want to lower your taxes upon death? Yes No

If you answered "yes" to any of the five questions, you may find it beneficial to set up a trust.

Living trusts come with some attractive benefits, including the following:

- In contrast to a will, a living trust provides privacy. Those not inheriting need not be told who has inherited what, unless someone chooses to tell them. With a living trust, professional management can come in to take care of administering the trust.
- If you own property in another province and fund it into your living trust, you will avoid a second probate on that asset that can be costly.
- In the event of your incapacity, a living trust can provide for private management of your assets and affairs and avoid public probate court involvement.

Mistake to avoid. To make a living trust meaningful, it must be funded. That is, the assets you want in the trust must be transferred to it. If you set up a trust but mistakenly never fund it, probate will not be avoided. You can also write your will to ensure that assets you want in the trust that are not there when you die are transferred to your living trust.

It's important that you understand how wills and living trusts compare (see Exhibit 1).

Exhibit 1: Comparing wills and living trusts

| Wills | Living Trusts |
|---|---|
| Are viable only at death. | Can have uses while you're alive. |
| Are public. | Are private. |
| Are not very good when you're dealing with more than one state. | Are good in every state and not encumbered by states. |
| Must go through probate. | Can generally avoid probate. |
| Are less expensive to put in place. | Are more expensive to put in place and administer. |

Is a living trust for you? It depends on your particular situation. Nevertheless, you should certainly consider it in consultation with your advisor or wealth manager, or estate lawyer.

The role of fiduciaries

A fiduciary is a person or organization that is ethically and legally bound to act in the best interests of another person and to oversee that person's finances.

For example, with respect to your will, you need to name an executor. When it comes to trusts, someone or some institution has to be the trustee. And if you have children who are minors, it is imperative that you name a guardian for them — the person or people who are willing and able to take care of your children if anything were to happen to you and your spouse.

Executors and trustees

After you're gone, wouldn't it be nice if there were someone who would make decisions concerning the disposition of your estate as you would have? When you name an executor of your will, this is possible.

An executor has a number of responsibilities, including the following.

- Collecting and organizing your assets
- Paying debts you owe
- Acting as a collection agency for money due to you
- Handling all necessary tax matters
- Ensuring that assets are distributed to beneficiaries

When you set up a trust, you are specifying how you want a situation managed in the future. It is the responsibility of the trustee to make sure that such intentions are carried out. The explicit responsibilities of the trustee vary depending on the nature of the trust you have set up, but may include the following:

- Ensuring the proper tax forms are filed correctly and on time
- Making investment decisions
- Working with beneficiaries

Guardians

There are three key standards that you need to follow in making this decision.

1. Will the guardian(s) love your children?
2. Are the guardian(s) capable of doing a good job raising your children?
3. Do you think the guardian(s) are going to raise your children with the same morals and values as you have?

Sometimes, the decision about who should be guardian of your children is obvious. Example: Your sister-in-law wants the responsibility, and you are confident she will do an excellent job as she has the same views on raising children as you do.

But many times the “right” person or couple doesn’t exist. Keep in mind that your decisions are not set in stone. As circumstances change, you should adjust your decisions accordingly. You can change your will or, for that matter, your entire estate plan anytime your situation changes.

Pro tip: An often-used strategy is to put control of the money in the hands of a trustee and make someone else the children’s guardian. This way, the trustee will make sure the monies earmarked for the children will indeed get to them.

Your next move

We find that about 85 percent of the estate plans that successful business owners have in place are more than five years old. That’s more than enough time for changes in tax laws, changes in your business’s fortunes and your personal wealth, and changes in your family situation to make your plan outdated and out of touch with your wishes.

We recommend that your estate plan be reviewed every year or two. The review should be conducted by a high-caliber wealth manager or tax professional, or estate lawyer — one who takes the time to learn what’s changed since you put your solutions in place, assess how those changes might impact your strategy, and make recommendations for getting your solutions current and in accordance with your wishes.



Please feel free to contact us

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