



Smart Planning



A SPECIAL REPORT

SUMMARY OF WILL PROVISIONS

April 2005

1. Family.

List family members and defines your family.

2. Specific Bequests.

Give specific items to certain named people.

People often name a charity as a partial beneficiary.

You can give tangible things to people by a Separate Letter. See Sidebar.

3. Residuary Bequest.

Describes who gets all the rest of your property.

Gifts to your spouse or charities are exempt from all estate taxes.

Typically most of the residuary goes to your spouse, and then to your children after he/she dies.

Identifies who will receive your assets if your spouse and children are gone.

You can name a charity or other institution as the last alternative beneficiary.

4. Trusts.

General Terms

You are the Grantor or trust creator, the Trustee is the manager of the trust, the Beneficiary is the future recipient of the trust principal or income.

Credit Trust (aka Credit Shelter or Bypass Trust)

This Trust is the foundation of any plan to avoid or limit estate taxes

Only used after the death of the first spouse to die.

If your married and family net worth is over 2 million you should have one.

This trust preserves each spouse's estate tax exemption.

It saves a 3 million estate almost \$500,000 in estate taxes.

Marital Trust (aka QTIP Trust)

Optional - An alternative to outright gifts to your surviving spouse.

Only used after the death of the first spouse to die.

Spouse must get all the income regularly.

Spouse can direct that principal be invested to produce more income.

Used when spouse can't manage money, in poor health, a second marriage, or very elderly.

Qualifies for the marital exemption to estate taxes when first spouse dies.

But all the remaining assets are considered part of your

spouse's estate when they die.

Descendant's Trust

Money from the Credit and Marital Trust goes here after second spouse dies.

Controls how your gift is used while children and/or grandchildren are still young and immature.

Can be split into separate sub-trusts for each child or kept in a single pot.

Sets the child's age when the trusts end and the principal is distributed to the beneficiaries.

If no trust is created the money is managed by a custodian under Uniform Transfer to Minors Act (UTMA).

Under Wash UTMA the kids can withdraw their entire share at age 21.

5. Estate & Trust Administration.

Names Key People

Name your choice for Personal Representative (aka the Executor) who manages your estate during probate.

See the Sidebar for a brief description of the probate process.

Name your choice for Trustee who manages your trusts after probate is done.

Describe terms for hiring and firing a bank trustee

Name your choice for the legal guardian of your children.

You can also name some alternatives for each role.

Allocates Death Taxes

Do folks receiving specific things like jewelry have to pay the taxes on them?

Or do you allocate all taxes to the residuary beneficiaries?

You can decide to allocate all estate taxes to one trust.

Who pays taxes on non probate items like your retirement accounts?

Your Will provides guidance and grants authority to your Executor.

No Contest Provision

If a beneficiary contests your Will they will receive nothing under the Will.

It's hard to contest a Will if it's properly prepared and you have legal capacity.

Capacity means you are of legal age, with a sound mind,

and not being coerced.

Prevention of Perpetual Trusts

Required by state law against trusts with a perpetual length.

The length (term) of your trusts is limited to 150 years.

6. Powers and Duties of the Trustee.

General Powers & Limitations

All powers available under Wash. State law given to Trustee.

Use of certain powers is limited.

Trustee must receive fair market value upon a sale or loan of trust assets.

Waiver of Notice

State law requires notices & special procedures for non-routine transactions.

This section waives these rules.

Reliance on Investment Advisors

Extensive state laws regulating investments by trustees. This section slightly softens them.

Trustee does not have to hire an investment advisor.

Determination of Principal & Income

State law has extensive guidelines as to what is principle and what is income.

Key issue for trusts that give different people the income and principal.

This section gives Trustee a little more discretion in making these decisions.

Distributions to Beneficiaries

Gives Trustee flexibility regarding how to make payments to minors.

If a trust only has a small balance the Trustee can end the trust.

Allows your stuff to be given to people (in kind) instead of selling it & just giving money.

Protection from Creditors

Creditors or ex-spouses often can reach a person's right to income or principal from a family trust.

This section gives extensive protection against creditors reaching those monies.

Annual Accounting

Extensive requirements under state law, including annual financial statement audited by a CPA.

Our section requires simple annual reports and inspection of records upon request.

This section frees your Trustee from all other accounting requirements.

Pooling of Accounts

Allows assets of Separate Trusts for each child to be combined for investing.

But Trustee must keep records to show each child's share.

Merger of Trusts: Division of Trusts

Allows Trustee to combine similar trusts or divide trusts into separate trusts.

Supplements existing state law.

Reliance on Good Faith: Liability

Extensive state law on fiduciary duty & liability of a Trustee.

This section softens liability if your Trustee acts in good faith.

Disclaimers and Releases

Allow Trustee to refuse to accept certain gifts into a trust. Trustee can release certain claims or rights.

Useful in avoiding adverse tax impacts, or to settle disputes.

Disabled Beneficiaries--Purposes

A spouse, child or other beneficiary may become disabled in the future.

Their right to trust income or principal will disqualify them from public benefits.

This section is written to preserve their right to public benefits.

Administration of Residential Property

Ideally a personal residence is not put into a trust created by a Will.

This section protects a surviving spouse if one must be placed into a trust to reduce estate taxes.

Prevents a Trustee from selling your current residence without your spouse's consent.

7. Execution of Your Will.

You must sign and date your Will in front of two witness who attest that you are of sound mind, and not under any coercion.

They can't be people who will benefit by the Will, or be named as a Trustee or Executor in the Will.

The two witnesses sign a notarized affidavit. □

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