

WILL WITH TESTAMENTARY TRUST

(ALL TO SPOUSE WITH CONTINGENT TESTAMENTARY TRUST FOR CHILDREN)

HIGHLIGHTS OF THE PLAN

OVERVIEW

A will is a legal instrument that permits a person to direct how his or her assets will be distributed after death. The person who sets up a will is called the testator, if male, or the testatrix, if female. Some assets owned by the testator/testatrix, such as jointly-held property with right of survivorship and life insurance, pension assets, and other assets with a named beneficiary, pass by operation of law or contractual provisions and are not subject to the terms of the will. The assets that are owned by the testator/testatrix at death that are subject to the will are known as the probate estate.

For a will to be valid it must be drafted and signed according to strict requirements imposed by state law. Though similar, these requirements vary from state to state. Before a will can be administered it must be filed with the local probate court and its administration must be supervised by the court. However, most states permit what is known as "independent", "informal", or "unsupervised" administration, thus requiring little or no supervision of the probate court. The person who administers the estate is sometimes called the executor or executrix, or may simply be referred to as the personal representative. There may be more than one personal representative appointed, and the will may provide for a successor personal representative to be appointed in the event a personal representative resigns, dies, becomes disabled or otherwise refuses to serve. The person or persons who are benefited by the will are called beneficiaries.

CHANGING WILL PROVISIONS

A will is a revocable legal instrument, which means the testator/testatrix has the power to change the terms of the will or revoke it until the time when he or she dies. A new will may be drafted to replace the existing will, or the existing will may be changed by drafting and executing a codicil or amendment. The codicil should refer to the will that is being changed and describe precisely what the changes or additions are and where they should be inserted. Any trust that is created in the will becomes irrevocable at the death of the testator/testatrix.

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A will with a testamentary trust is used primarily when the testator/testatrix has minor children who will or may receive property under the will. Often, property is left outright to the spouse with the trustee of a trust for the benefit of the children as the contingent beneficiary. If the spouse dies before the testator/testatrix, the property will go directly into the testamentary trust for the benefit of the children. A charity might be the recipient of the estate in the event that no

spouse, children or other descendants are alive at the testator/testatrix's death. Sample provisions for the gift of property to charity are included in the Technical Preface.

ADVANTAGES OF A WILL WITH A TESTAMENTARY TRUST

1. A will permits the testator/testatrix to direct the distribution of his or her property at death, thus, avoiding the rigid inheritance laws prescribed by the state for those who die without a will.
2. A will can be used to appoint a guardian for minor or incompetent children and a personal representative to administer the estate.
3. The expense of creating a will with a testamentary trust is often less than the expense of creating a revocable living trust that people often create to avoid probate.
4. A will with a testamentary trust allows the testator/testatrix to arrange for the financial security of minor children or other descendants.

DISADVANTAGES OF A WILL WITH A TESTAMENTARY TRUST

1. A will is subject to probate. This means that the estate is subject to the expense and time delays that result from administering a will under court scrutiny, oversight, and approval, as required by the probate process.
2. Wills are public documents. A will must be placed in the public records when it is probated, thus allowing anyone to read the terms of the will.
3. Unlike a trust a will cannot be used to choose the law that governs the terms of the estate administration. The law of the state of the testator/testatrix's domicile or the location of certain property will govern how the estate is administered.
4. If the will is successfully challenged as to its validity and thus does not receive court approval to be administered, any testamentary trust that is contained in the will is also invalid.