

Worksheet 4.2

WILL AND TRUST BASIC DECISIONS

Regardless of the size of your estate, all wills and trusts require basic decisions about who will administer the estate or trust property, whom property will go to, how it will be divided, etc. Use this worksheet to help make some decisions on key elements of your will and trust documents. Factors to consider are noted with each question.

PERSONAL REPRESENTATIVE(S) (aka EXECUTOR(S)): Probate is the process of administering one's affairs at death through a court process. When a person dies with or even without a Will, a probate is most often required to get things in order so assets can be distributed. While there are ways to bypass probate, if parts of your estate pass through probate, you need to select who you believe can handle the details of paying your debts, filing probate documents, paying possible estate taxes, and distributing the remaining assets to the beneficiaries named in your will. This person is referred to as the Personal Representative in Washington, or the Executor or Executrix. A spouse is appropriate as well as adult children, close friend, accountant, lawyer (subject to ethical disclosures), or a bank's trust department. The individual is generally paid. Successors (1 or more) should be named in case the first predeceases you or is incapacitated or is otherwise unable or unwilling to serve.

Name/Address: _____

Successor(s): _____

TRUSTEE(S): If you are advised to make use of a trust, whether in your will or in a separate revocable or irrevocable trust, you will need to name a trustee to manage investments, pay taxes, make decisions about income and principle distributions, and so forth. In the event he or she cannot serve, you will want to provide for one or more successor trustees. Normally if you form a revocable trust (one you can change) you will be its first trustee, with your spouse taking over following your disability or death, then a trusted family member or institution taking over upon death or incapacity.

Name/Address: _____

Successor(s): _____

You may be advised to select a corporate or individual fiduciary as executor or trustee, depending on your family situation. Trustees (just like Personal Representatives for an estate) are referred to as fiduciaries because of the high standard of care required of them to manage the assets of another person.

GUARDIAN(S) (for minor children): For parents with minor children using this workbook, it is important to accept the possibility that you could, through accident or illness, predecease your children. It is strongly advisable to nominate a guardian for your children in the body of your will, and also in your durable power of attorney should you become legally incapacitated as permitted in Washington State. A thorough discussion of who might best serve as the guardian of your children in that event should take place before drafting or updating your wills. It is important to identify secondary and third guardians in the event your first choices are unable through changed circumstances to serve or otherwise care for your children. This will provide clarity of your wishes to your family and friends.

Factors to consider would include: age of proposed guardians and ages of their children; ages of your children and the number of them who are still minors; and health and financial situations of all parties. If you name a couple as guardians and one of them dies, would you want the surviving co-guardian to act as sole guardian? What if they divorce? Is a brother, sister, grandparent or a close friend the better choice? Be sure to discuss the matter with your intended choices to make sure they are willing — or otherwise feel confident they are able —

to serve as guardians for your children. Remember that your will is merely a suggestion to the court, but in all likelihood the suggestion of guardian will ensure your children are cared for according to your wishes.

Name/Address: _____

Successor(s): _____

DISTRIBUTION OF ASSETS TO SPOUSE: Much of your property will be jointly owned and may pass immediately to your spouse; if you have a written community property agreement with vesting language in it, all community property can do so as well. For assets you own individually, i.e. “separate” property as defined under Washington law, you will need to decide whether to pass those to your spouse or someone else. Should assets be held in trust for management purposes, estate tax management or incapacity of spouse? Your attorney may advise the use of a revocable trust to protect your estate tax exemption while providing care for your spouse for her lifetime. Keep in mind that unlike in Washington, in many states your spouse is entitled to a certain share of your estate (unless he/she has executed an enforceable prenuptial agreement), and a devise smaller than the statutory level may add expense to the estate in determining a statutory share. There is a provision in Washington for a spousal claim, but it is a limited one and generally granted for need.

DISTRIBUTION OF ASSETS TO CHILDREN: If you do not want your assets distributed outright to your children in the event of your demise, assets should probably be held in a trust. A “testamentary trust” can be created in your will as contingency provisions for underage children, particularly if your estate is still relatively modest. Alternatively, you can use a revocable trust with contingency provisions. The trustee will take care of minor children’s needs as instructed in the trust. At some future time you will probably want to distribute the assets to the children. At what age? What about a child with disabilities? What about grandchildren?

Many people like to distribute a portion of the estate at several different times during their children’s lives. (For instance, distribute at age 21, at age 25, and at age 30; or ½ at age 30 and ½ at age 35, etc.)

Your preference: ____ % at age ____ ; % ____ at age ____; % ____ at age ____.

Other Key Considerations:

1. Do you want the estate to pass in equal shares to children?
2. Do you want some to have more because others have had more in the past or to provide adequate opportunities to keep the business in the family?
- 3 Do any of your children have special needs? If so, your lawyer should advise you on trusts designed to benefit your children while allowing them to maximize available support payments (ie. Special or Supplemental Needs Trusts).

DISPOSITION OF REMAINS: If you have a specific idea of whether you want to be cremated or where you want to be buried, your will is the proper place to make it known.

CHARITABLE BEQUESTS: You can specify charitable bequests in your will and/or trust. These can include your church, your school alma mater, or a non-profit organization whose mission you support. For very large gifts you should have your attorney pre-plan with the recipient institution, particularly where the gift is land.

INDIVIDUAL BEQUESTS: Often there are special heirlooms or gifts of family treasures that you want specific individuals to have. (Attach sheets as necessary) You have the ability both in your will and trust to distribute specific items, this may help avoid confusion between heirs interested in the same item without knowing your preference. Many trusts incorporate “personal property memoranda” whereby you can efficiently instruct your future Trustee on distribution of certain assets. Use additional sheets if necessary.