

THE IMPORTANCE OF TRUSTS

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The Covid crisis exemplified how loss of control can destabilize families. Besides work and school interruptions, institutional shutdowns complicated the regular flow of legal and transactional activity. Estate plans reliant on Court intervention or bank authorization faced delays in their implementation and administration. The passing of a loved one is difficult enough, but if barriers exist that thwart the smooth transition of one's legacy then the impact can be damaging.

Wills and Trusts are the two foundational estate planning documents that direct how a person's assets are handled and by whom. The instructions laid out in a Will do not go into effect until after the Will's creator dies and the Will document is accepted by the appropriate court. Probate is the process by which a Will is reviewed by the Court and the necessary parties connected to both the decedent and the Will itself are identified and recognized. Courts require specific accompanying documents to complete the Probate process including petitions, waivers and consents, affidavits and sometimes family trees. Document issues, unreliable family members and unanticipated delays will stymie efforts to wrap-up an estate.

Revocable Trusts and Irrevocable Trusts bypass the Probate process following the death of the trust creator. Revocable Trusts may be changed, amended or revoked by the trust creator up until their passing. Irrevocable Trusts grant powers to a Trustee chosen by the trust creator and the Trust may not be materially altered. Irrevocable Trusts offer increased asset protection while Revocable Trusts allow for greater flexibility. Within both types of trust documents are instructions for the carrying out of an estate plan without the need for court approval.

Control is maintained by a named Trustee. By stressing speed and simplicity an estate plan buttressed with Trusts can usually ensure that one's legacy is carried out with fewer interruptions.

One illustration of the differences between a Will and a Trust is how a house is transferred. A homeowner having sole ownership of the property may leave the home to an adult child in the Will. Following the homeowner's passing, the Will must be located and the named executor must complete a probate petition. Every distribute or heir-at-law of the decedent must execute a waiver and consent, while parties named in the Will receive a Notice of Probate. An estranged adult child may not want to execute the waiver and consent. This is not an uncommon occurrence. A citation will be issued with a return date to allow the estranged child an opportunity to appear in the matter. If there are no further issues then the Court may grant Letters Testamentary. Once the estate is opened creditors have a seven month window to file against the estate in a manner which would hold the executor liable should estate assets be prematurely distributed without satisfying valid debts. By the time an executor's deed transfers the property to the adult child named in the will the process will have taken many months.

For Trusts, the property deed will be directly transferred from the existing owner to the Trust itself, accepted by the named Trustee. The property's ownership will remain in the Trust until such time that the Trust directs its transfer to a named party or directs it to be sold with proceeds distributed. Court approval is not part of this transfer.

The stark contrast between Wills and Trusts in terms of legacy planning highlight the importance of utilizing Trusts to maintain control and efficiency in turbulent times. Contact the professionals at The Feller Group, P.C. today.