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# Estate Planning Simplified

*Understanding Wills & Trusts*

*While it's easy for people to back-burner estate planning, doing so can result in property and financial assets passing to unintended heirs in unintentional ways.*

When American singer, songwriter and musician, Prince Rogers Nelson, died unexpectedly in April 2016, he left an estate valued at an estimated \$250 million. Because Prince had no will or estate plan in place, his estate was expected to pay a whopping \$100 million in estate taxes to the federal government.<sup>1</sup> The remainder of his assets would be distributed equally among the siblings he cared for, as well as several estranged siblings he may not have intended to include as heirs. Since Prince never got around to documenting his intentions, we'll never know, but it's a safe bet that he never intended to bequeath more than a third of the value of his estate to the government in the form of estate taxes.

While it's easy for people to back-burner estate planning due to busy schedules, or thinking they've got plenty of time to get around to it, doing so can result in property and financial assets passing to unintended heirs in unintentional ways. In Prince's case, estate planning could have eliminated the estate tax upon his death<sup>1</sup> and ensured his assets were distributed to the people and organizations he intended. The key to maintaining control of your assets, avoiding probate and minimizing estate taxes is to plan now.

## WHO NEEDS AN ESTATE PLAN?

Often, people believe that estate planning only benefits the very wealthy, but nothing could be further from the truth. It's something everyone needs to engage in regardless of age, estate size or marital status. If you have a bank account, investments, a car, home or other property—you have an estate. More importantly, if you have a spouse, minor children or other dependents, an estate plan is critical for protecting their interests and their future income needs.

An estate plan can help you accomplish the following goals:

- Name the family members, loved ones and organizations you wish to receive your property following your death.
- Transfer property to your heirs and any organizations you've named in your estate planning documents in an expedient manner with as few legal hurdles as possible.
- Minimize or eliminate estate taxes.

- Name your executor and/or trustee – the individual(s) or institution you appoint to act as your proxy in settling your estate and distributing your property.
- Avoid probate; the court process for proving that a deceased person's will is valid and the administration of a descendant's estate.
- Document the type of life-prolonging medical care you do or do not wish to receive should you become incapacitated.
- Express your wishes and preferences for funeral arrangements and how related expenses will be paid.

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## DO I NEED A WILL OR TRUST?

In many cases, you may need both a will and a trust. A will helps to ensure that property is passed according to an individual's wishes and is drafted according to state laws. Trusts can be valuable in limiting estate taxes and legal challenges, and specifying how and when property is distributed, according to your wishes.

### A WILL HELPS TO:

- **Ensure that your possessions will be distributed as you wish.** If you die without a will, the law decides how your estate will be distributed. Although some property will automatically be passed to a spouse or children, exact distribution depends on the value of the property and the terms of title deeds. A will ensures that your wishes will be carried out.
- **Appoint and outline powers of an executor.** Writing a will allows you to decide who will oversee and manage distribution of your estate. Designating a trustworthy and impartial executor provides peace of mind that the terms of your will and your wishes will be honored.
- **Appoint a guardian for minor children.** Your will serves as a legal guiding document for the care of minor children in the event of the death of both parents.
- **Specify funeral wishes.** Specifying your funeral wishes in your will reduces stress for loved ones and ensures your wishes will be honored.
- **Expedite the legal process.** It is faster and less costly to settle an estate with a valid will in place. It helps reduce unnecessary legal fees which, in turn, help protect the value of property and assets passed to your beneficiaries.
- **Reduce stress and heartache for loved ones.** A will that clearly outlines your wishes for funeral arrangements and property distribution will reduce confusion and family disagreements during a stressful and emotionally difficult time for family members.

AMONG U.S. CLIENTS WORKING WITH FINANCIAL ADVISORS, ONLY:<sup>4</sup>



- 55%** have estate plans in place
- 36%** have trust services in place
- 27%** acknowledge an estate plan is needed

### THE ROLE OF THE EXECUTOR

Your Executor is the individual named in your will to carry out the duties of administering your estate and distributing estate assets, including investment assets and real property (real estate, automobiles, household items, collectibles, etc.) in accordance with your wishes and instructions following your death. The Executor is responsible for making or overseeing funeral, burial or cremation arrangements and paying for these expenses with estate assets.

Executors are provided the legal authority and responsibility to manage assets and handle day-to-day financial matters, including:

- Performing a broad range of duties from making decisions and judgments related to distributions and legal situations.
- Handling all financial recordkeeping, reporting and accounting circumstances relative to the estate.
- Initiating transactions, managing assets and filing taxes on behalf of the estate.
- Serving in a fiduciary capacity as an impartial third-party in managing all legal, tax and family matters.
- Making difficult decisions in accordance with the provisions in the will that may not be popular with all of the estate's beneficiaries.

While these duties sound onerous and can be quite time consuming, keep in mind that Executors also have the authority to enlist the help of professionals to reduce their burden, including financial, accounting, legal and real estate professionals.

## WHEN A WILL IS NOT ENOUGH

While a will is an important estate planning tool, it is not designed to offer certain protections available under a trust. One key difference between a will and a trust is that a trust can include an incapacity clause stating who you want to manage your affairs in the event you are unable to do so during your lifetime. While a will can determine who may receive your assets outright, a trust provides the opportunity to designate how and over what time period or at what age your property or assets may be dispersed to heirs. This can be very important when beneficiaries are minors, or in the event you want to place specific parameters on the amount of assets adult heirs may access over a given time period. Trusts can also be used to help ensure proper management of your assets during your lifetime.

- **During your lifetime**, you are the trustee of your trust. You're free to manage the property or assets in your trust in the manner you choose. A trust created and funded during your life is generally called a "living" or "revocable" trust.
- **In the event you are incapacitated**, a trust can help ensure that your needs continue to be met and that your finances are kept in good order for your benefit.
- **Upon your death**, a trust becomes "irrevocable," and your assets are managed and distributed by your trustee, in accordance with your instructions, throughout the trust's existence.

# UNDERSTANDING TRUSTS

## WHAT IS A TRUST?

A trust is a formal legal document used to communicate your instructions for the management of all or part of your property and describes:

- How you want your assets managed, and eventually, distributed.
- Who you want to benefit from your assets now and in the future.
- Who you want to be responsible for carrying out these instructions (the "trustee").

## BENEFITS OF A TRUST

Trusts can provide comfort in knowing that you have a plan in place to provide for the management of family assets and to direct their use in accordance with your wishes during your lifetime and long afterwards. While tax planning remains an important reason for creating a trust, family planning, asset preservation and protection from creditors are among the many reasons people create trusts. Trusts also provide protection for family members who may be unaccustomed to dealing with financial matters or for family members with special needs. They can offer certain protections in the event of divorce or other litigation, or can help ensure that funding is available for specific needs, such as education, healthcare or charitable interests.

For most people, the primary objective in establishing a trust is to help ensure assets are protected, managed and distributed in accordance with their wishes when they are no longer able to do so themselves due to incapacity or death.

All trusts fall into one of two categories:

### 1. REVOCABLE/LIVING TRUST

A revocable or living trust can be modified or terminated during your lifetime. You control the trust and any earnings generated by assets held in trust are reflected on your income tax returns. You may manage financial assets held in the trust or hire a financial advisor to manage your assets under your supervision and in accordance with trust provisions. A revocable trust can also be used to transfer assets at death (similar to a will) but unlike a will, trusts are not subject to the court-supervised probate process. In many states, the probate process is slow and expensive and also opens your estate to public scrutiny. Once you pass away, your wishes are final and the trust becomes irrevocable.

## 2. IRREVOCABLE TRUST

As a general rule, an irrevocable trust cannot be modified or terminated (before or after your death) without court approval. An irrevocable trust is a separate legal entity and its own taxpayer. While the concepts of an irrevocable trust may initially sound stringent, irrevocable trusts can allow significant flexibility. Irrevocable trusts set up before death are often used to hold life insurance policies, gifts of assets to be made available to beneficiaries at a future date or funds for future charitable donations.

All trusts, whether revocable or irrevocable, involve three parties with distinct roles and interests:

<b>GRANTOR/ SETTLOR</b>	The person(s) creating the trust (you, or you and your spouse)
<b>TRUSTEE</b>	The person(s) or institution you appoint to be responsible for the trust in the event of your incapacity or death
<b>BENEFICIARY</b>	The people or charities (current and remainder) that benefit from the trust ("beneficiaries")

## UNDERSTANDING THE ROLE OF A TRUSTEE

The trustee's role is to administer and distribute the assets in the trust according to your wishes, as expressed in the trust document.

- Trustees have the fiduciary duty, legal authority and responsibility to manage your assets held in trust and handle day-to-day financial matters on your behalf.
- They are required to perform a broad range of duties from making difficult decisions and judgments related to distributions and legal interpretations, to recordkeeping, reporting, accounting, initiating transactions, managing trust assets, filing taxes on behalf of the trust and more.

## WHO CAN BE APPOINTED TRUSTEE?

- A trustee can be an individual, corporation or association.
- Trustees can serve in the capacity of sole trustee, co-trustee or successor trustee.

When naming a trustee, it's important to consider the complexities of the trust and whether the trustee you select has the time, knowledge, expertise, objectivity and desire to assume the important responsibilities that accompany this role.

## TYPES OF TRUSTS

While all trusts are either revocable or irrevocable, many types of trusts exist within these two categories to help meet a broad range of objectives. Some of the more common types of trusts are listed below.

- **SURVIVOR'S TRUSTS** are created by an individual during their lifetime to provide for a surviving spouse, domestic partner or other loved one(s). There are many different types of Survivor's Trusts including Family Trusts, Bypass Trusts and Credit Shelter Trusts, among others.
- **GUARDIANSHIP TRUSTS** are established to protect and handle the assets of minors
- **GENERATION-SKIPPING TRUSTS**, also called GST or Dynasty Trusts, provides distributions for the benefit of a child for life, with the remainder continuing on for the grandchildren (or more remote descendants).
- **SPECIAL NEEDS TRUSTS** are established to ensure any supplemental or living expenses are paid over the course of a disabled person's lifetime that are not paid by other sources. SNTs may also be set up with the disabled person's own funds to provide for supplemental medical or living expenses.
- **CHARITABLE REMAINDER TRUSTS** are irrevocable trusts with both income and remainder interests. Income is paid to designated beneficiaries for a certain term or lifetime. The remainder interest is paid to qualified organizations as specified in the trust document when the trust terminates.
- **CHARITABLE LEAD TRUSTS** are irrevocable trusts that generate a potential income stream for one or more charities of the donor's choice, with the remaining assets eventually going to family members or other beneficiaries.
- **PRIVATE FOUNDATIONS** are charitable organizations created and funded by a donor as a trust or a non-profit organization, which is designed to achieve one or more specific charitable functions.
- **RABBI TRUSTS** are set up by corporations to support non-qualified, deferred compensation plans for selected executives.
- **IRREVOCABLE LIFE INSURANCE TRUSTS** or ILITs are used to shelter an insurance death benefit from estate taxes and may provide liquidity to pay estate taxes and settlement costs.
- **CREDIT SHELTER TRUSTS** allow married couples, who may have to pay estate taxes, to reduce those taxes by taking full advantage of state and federal estate tax exemptions.

## ADDITIONAL ESTATE PLANNING CONSIDERATIONS

In addition to a will and trust, you'll want to work closely with an attorney to draw up any additional estate planning or legal documents required to protect your interests, support your objectives and ensure loved ones have the legal authority to carry out your directives including:

- **General Power of Attorney (POA)** gives broad powers to a person or organization (agent or attorney-in-fact) to act on someone else's behalf. These powers include handling financial and business transactions, buying life insurance, settling claims, operating business interests, making gifts and employing professional help. A general power of attorney is an effective tool if the grantor will be out of the country and needs someone to handle certain matters, or when he or she is physically or mentally incapable of managing their own affairs. A general power of attorney is often included in an estate plan to make sure someone is appointed to handle financial matters.
- **Durable Power of Attorney** a general, special or healthcare POA that has a durability provision to keep the current power of attorney in effect. Many people execute a durable power of attorney to prepare for the possibility that they may become incapacitated due to illness or injury. The Durable POA may specify that it cannot go into effect until a doctor(s) certifies the grantor as incapacitated.
- **Financial Power of Attorney** allows the grantor to appoint an agent to manage financial and legal matters. It can be a general, durable or special POA and may be granted for a limited time period or for use under specified circumstances only.
- **Special Power of Attorney** specifies exactly what powers an agent may exercise. This is often used when the grantor cannot handle certain affairs due to other commitments or health reasons. Selling property (personal and real), managing real estate, collecting debts and handling business transactions are some of the common matters specified in a special power of attorney document.
- **Living Will** A living will, also called a directive to physicians or advance directive, is a document that lets people state their wishes for end-of-life medical care in the event they become unable to participate in decisions regarding their medical care.
- **Healthcare Power of Attorney** a medical or healthcare power of attorney is a type of advance directive in which you name a person to make healthcare decisions for you when you are unable to do so. In some states, this directive may also be called a durable power of attorney for healthcare or a healthcare proxy.
- **HIPAA Authorization** the Health Insurance Portability and Accountability Act is a federal law that sets rules and limits on who can look at medical records or receive health information. A HIPAA authorization allows people to name an individual(s) who can have access to their medical information.



### DID YOU KNOW?

All powers of attorney, including durable powers of attorney end when the grantor (or principal) dies. Following the death of the grantor, all estate-related actions and transactions must be performed by the executor named in the decedent's will, or the court appointed estate administrator if the individual died without a will.

## KEEPING FAMILY MEMBERS IN THE LOOP

While many life events provide us with adequate time to prepare such as marriage, the birth of a child or retirement—others, like accidents, injuries or the death of a loved one can happen without notice or a chance to prepare emotionally or financially. Knowing where to find important legal documents and financial information in the days and weeks following the incapacitation or loss of a loved can help reduce stress in a time of crisis, and help you and family members avoid mistakes that may be difficult to reverse later. The ideal time to initiate important discussions concerning legal and financial matters and end-of-life wishes is well before an illness, incapacity, diagnosis of dementia or mental incompetence or death occurs. This helps to ensure that family members:

- **Are aware of advance directives** including living wills, which specify wanted and unwanted procedures, and do-not-resuscitate (DNR) orders. These documents should also be readily available for you to take to the hospital if a loved one is admitted.
- **Know the location** of wills, trust documents, birth certificates, marriage certificates, Social Security information, life-insurance policies, financial documents, keys to a safe deposit box, etc. It's also a good idea to inform grown children or another trusted individual about the location of important documents in the event of an accident or illness while traveling.
- **Understand your wishes** and preferences regarding funeral arrangements, organ donation, burial or cremation and more.

## TRANSFERRING WEALTH TO THE NEXT GENERATION

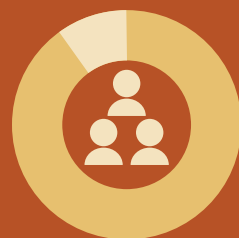
Over the next 30 years, an estimated \$30 trillion will be passed down from Baby Boomers to Generation X and Millennials.<sup>2</sup> For many families, the transfer of significant wealth to the next generation creates concerns about how prepared adult children and heirs may be to serve as prudent stewards of inherited wealth. And for good reason—70% of family money disappears by the end of the second generation, and 90% is gone by the end of the third generation.<sup>2</sup>

Well before wealth is transferred, it's important to consider if your intended heirs embrace the same values you do when it comes to caring for and preserving your legacy for the benefit of future generations. Do they possess the financial education and knowledge to do so? How well do they manage their own finances and what are their attitudes toward saving, spending and investing?

Multigenerational education and wealth planning is an area that your Wealth Advisor is well-equipped to address and provide valuable advice and guidance. Advisors can meet with your heirs individually, meet with your family as a unit and even provide more formal training to your heirs to help them prepare to be prudent stewards of family wealth.



**70%** of family money disappears by the end of the second generation<sup>2</sup>



**90%** is gone by the end of the third generation<sup>2</sup>

## WHEN BENEFICIARIES ARE MINORS

While wealth most commonly passes to the next generation, older family members, including grandparents, aunts and uncles may choose to pass wealth directly to grandchildren, nieces, nephew, or other minor heirs. This may be done to ensure wealth remains available to them, is set aside to cover education expenses or for other reasons, including strained family relationships. However, it's important to be aware of certain limitations in place in regard to passing wealth to minor beneficiaries.

When parents, grandparents or other relatives name a child as primary or contingent beneficiary of an insurance policy, individual retirement account (IRA) or investment account, they should be aware that most policies and investments will not directly transfer to a minor. They need to be received by a court-approved property guardian, a trustee of a Guardians' Trust or a revocable living trust beforehand. That's because state laws prevent children (anyone under age 18) from receiving large lump sums. They commonly prohibit minors from owning real property worth more than \$2,500-\$5,000 (the limit varies per state) or receiving cash inheritances greater than that. It is also incredibly rare for insurers to distribute life insurance proceeds to minors.

## APPOINTING A PROPERTY VS. PERSONAL GUARDIAN FOR MINOR CHILDREN

A critical area of estate planning for parents with minor children is guardianship. The individual you name as personal guardian for a child may be, but is not required to be, the child's property guardian. While one person usually serves as both, if that person lacks financial literacy or accountability, it may be necessary to appoint a separate property guardian to manage assets for the child until the child turns 18. In that event, a court must review the choice of guardian, and any inherited assets will be probated.<sup>3</sup> A property guardian should be someone likely to live at least until the child turns 18.

If you fail to appoint a trustee or property guardian for a minor through your will or trust, the courts will decide who that trustee or guardian will be. As one or more children approach legal age, the terms of your will or trust should be reviewed and updated as appropriate.

## SPECIAL NEEDS ESTATE PLANNING CONSIDERATIONS

Comprehensive estate planning is also critical when caring for a child or loved one with special needs. You'll need

to estimate how much assistance your beneficiary may require to support his or her needs after you're gone, and determine the source of those funds.

Long-term special needs planning is in many ways an extension of your retirement planning. The first step is figuring out what you'll need to fund your own retirement while continuing to care for a special needs child or adult during your lifetime. Any remaining assets can then be used to fund a Special Needs Trust (SNT) after your death. But what if you expect to exhaust all of your assets during your lifetime? Fortunately, there are additional ways to fund a Special Needs Trust, including life insurance, or leaving a home or other real property to the trust.

## ABLE ACT HELPS EASE THE SPECIAL NEEDS FINANCIAL BURDEN

The ABLE Act, which stands for Achieving a Better Life Experience, was signed into law in December 2014. This welcome legislation helps ease the financial burden for individuals with disabilities and their families by creating tax-free accounts that can be used to save for disability-related expenses. ABLE accounts can be created by individuals to support themselves or by families to support their dependents.

The ABLE Act enables the creation of tax-exempt, state based\* private savings accounts to fund disability-related expenses to supplement benefits currently provided by Social Security, Medicaid, employers and private insurance. ABLE account funds will not impact continued eligibility for Supplemental Security Income (SSI), Medicaid and other public benefits. However, there are certain disadvantages to an ABLE account.

- A disabled individual or dependent may not be eligible for an ABLE account if the age of onset of the disability occurred after age 26, or the disability does not meet the threshold to document significant disability under age 26.
- If the ABLE account owner does not use all of the resources in the account before he or she dies, the remaining funds are subject to a payback provision to the state if Medicaid was used for any support and/or services.
- Up to \$14,000 annually (the federal gift tax exclusion) may be contributed to an ABLE account.\*\*
- The first \$100,000 in ABLE accounts will be exempt from the SSI \$2,000 individual resource limit. After \$100,000, the beneficiary's SSI will be suspended (but not terminated).\*\*



Special needs planning is complex. Therefore, it's important to discuss your long-term goals with your Wealth Advisor and/or an attorney experienced in special needs planning.

*\*While all states have the option to create an ABLER account program, they are not obligated to and may instead contract with another state to offer ABLER accounts.*

*\*\*There are no such restrictions in a Special Needs Trust or Pooled Income Trust. Source: National Disability Institute.*

## GETTING STARTED IS EASIER THAN YOU THINK

For many people, getting started is the toughest step in the estate planning process—but it doesn't have to be. While estate planning sounds complex, it really boils down to two things: 1) deciding who will benefit from your legacy, and 2) determining what instruments and documents need to be in place to support your objectives and ensure your wishes are met. The best part is your Wealth Advisor can assist you with both.

Your Wealth Advisor will help you design a comprehensive and well-defined estate plan to optimize the distribution of your assets in exactly the manner that you desire, while minimizing taxation. He or she will work with your attorney (or refer you to an attorney) and utilize our team of experienced estate planning professionals to implement your estate planning strategies, including the establishment of a trust.

Together, we can help you gain confidence that your legacy will be carefully and thoroughly carried out with a plan that insulates your heirs from any unnecessary hardships. If you have questions about how comprehensive estate planning may benefit you and your family, schedule a meeting with your Wealth Advisor today to discuss your concerns and wishes.

Put yourself on the path to enjoying the sense of accomplishment and relief that comes with knowing you have a plan in place to protect and provide for your loved ones, heirs and the organizations you support.

**Contact your Wealth Advisor today to learn how our team can help you pursue your financial and estate planning goals with confidence.**

<sup>1</sup> *Financial Planning: The Many Missed Opportunities of Prince's Estate*, by Ingrid Case, May 24 2016.

<sup>2</sup> *Investment News, Generational Planning*, July 13, 2015.

<sup>3</sup> *ThisMatter.com: Wills, Estates, & Trusts For Minor Children*, May 5, 2015.

<sup>4</sup> *Pershing/BNY Mellon: 30 IN 30 report*; April 2014.

### WHAT FAMILIES WANT HELP WITH<sup>4</sup>



**48%** want to know if their wills and trusts are up to date

**42%** want help understanding the issues associated with multigenerational wealth transfer

**41%** want help creating plans to transfer wealth to their children

### ALREADY HAVE AN ESTATE PLAN?

Your Wealth Advisor can provide you with a second opinion or review your plan to determine if your estate planning documents and strategy are up-to-date and compliant with the most recent state and federal tax laws and regulations.

## ABOUT CARSON INSTITUTIONAL ALLIANCE

Our goal at Carson Institutional Alliance is to work with clients throughout the Wealth Designed. Life Defined.<sup>™</sup> process to identify each of their financial and non-financial concerns, and to address those concerns. Putting a plan in place to pursue your goals will not only assist you in your quest to attain True Wealth, but help provide the balance and control you seek across all aspects of your financial life. Our job is to take the worry out of managing your finances so you can rest easy. We want you to get to the end of your life and say, “I’m glad I did,” not “I wish I had.”

# Wealth Designed. Life Defined.<sup>®</sup>

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