

# ESTATE PLANNING

## PART TWO

### LAST WILL VERSUS LIVING TRUST



By Christine Messmer, M.S.F., CFP®

The correct strategy for you last will or living trust depends on your individual circumstances and objectives. A last will determines how your assets pass to your heirs or others at your death; whereas, a living trust is created in your lifetime and affects your property during your lifetime and upon your death. If you establish a living trust, then it is advised that you have a “pour-over will” for any assets that may not be in trust at the time of death.

A last will generally costs less and is very easily established, but cost should not be a major factor in determining what is the best strategy to implement. A last will with a testamentary trust should be used by persons with children. It allows the executor to fund the trust with assets for the health, maintenance, welfare and support of minor children if you and your spouse pass away

together. Other irrevocable trusts may be established by your last will depending on circumstances.

A living trust also called, “inter vivos,” or “revocable” allows you to maintain full control of your assets during your lifetime. It allows you to name a successor trustee to manage your affairs in the case of incapacity, and it allows you to control the distribution of your estate upon death. A living trust is not a tax saving trust; although, it does allow an individual to avoid the costly probate process. Probate establishes the validity of a person’s last will, discloses all of your assets, makes your estate a public record and gives your executor or administrator the authority to settle your estate.

Basically, after an attorney prepares your living trust document; your assets must get re-titled to the trust, and by doing so your trust gets funded. This process may be time-consuming and complicated, but it is absolutely essential to “fund” the trust, otherwise, it will not serve you or accomplish your goals. Living trust terms may be changed or amended at any time or completely cancelled. You maintain full control as trustee of your trust.

An irrevocable trust is generally used when advanced estate planning is needed. It is a tax saving trust with its own tax identification number. It is established in your lifetime or sometimes may be established by your last will at your death. In any case, you must name a person, or more than one person or business entity as trustee. You cannot be trustee of your irrevocable trust because essentially you are giving away assets to the trust and giving up ownership. Your designated trustee is responsible for carrying out your wishes and distributing your estate upon death. In addition, the trustee should be filing an income tax return for the trust each year.

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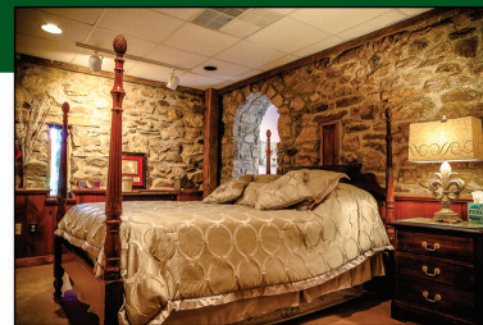






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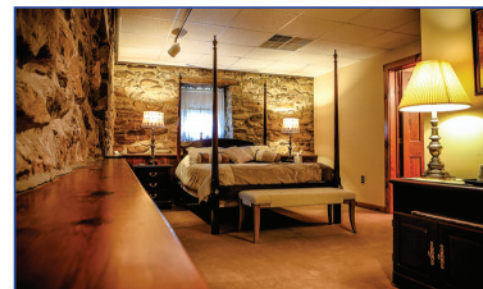
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**ESTATE PLANNING**

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The latest legislation, the "Tax Cuts and Jobs Act" which became law this past December 2017 doubled the Federal Estate Tax Exclusion to \$11.18 million per person (\$22.36 million per married couple). Federal estate taxes would only be due on estates greater than the exemption. There are no taxes between spouses, but there are strategies that the people may implement to preserve both exemptions. In past years, the exclusion amounts were much less, so people with reasonably large estates often utilized an irrevocable trust to reduce or avoid Federal Estate Taxes.

When a person establishes an irrevocable trust and re-titles assets placing them into trust; the assets are removed from the estate. There is a 60-month look-back period for irrevocable trust assets meaning that assets are not completely out of your estate until that period has elapsed. If you believe you are in need of advanced estate planning, consider the counsel of an experienced estate planning professional and tax advisor.

Why is it important to have a last will or living trust? Estate planning is an important part of your overall financial management strategy allowing you to manage and control your assets in your lifetime while

also providing a distribution strategy for your assets upon death.

A last will prevents your estate or all that you own from going to unintended beneficiaries. Instead of letting the court decide who gets your assets based on state law; you get to designate your executor, guardians for children, trustee for any trust established by a will and all the provisions are based on your wishes.

A revocable living trust allows you to control your assets during your lifetime as well as disposition of assets upon death. In summary, the main benefits include:

- No relinquishment of ownership or control of assets;
- Management tool established and used in your lifetime;
- Avoids costly probate;
- Avoids making your estate assets a public document;
- Assists in the case of incapacitation, since a Successor Trustee that you designate steps in to manage your affairs very easily.
- Assets continue to be in trust or are distributed at death by the successor trustee.