

Estate Planning Primer*

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* This article only provides very basic information and is not designed to replace competent legal advice.

Basic Concept One: Will vs. Trust

Many people ask me, "Which is better, a will or a trust?" My answer is always, "It depends." Both the will and the revocable living trust can be designed to address all of the individual's dispositive provisions. Both the will and the revocable living trust can be designed to address any estate tax planning.

The primary difference between a will and a revocable living trust is that a will is subject to probate – a public court proceeding – while a revocable living trust is not. A revocable living trust is not subject to probate because it is a separate legal entity (though disregarded for tax purposes) with a life outside that of the grantor(s) of the trust.

While the cost of preparing a will and a revocable living trust are similar, the revocable living trust has more up-front costs because the trust is "funded" at the time it is created. In other words, when a revocable living trust is created, legal title to the grantor(s) assets is transferred to the trust.

Some factors to consider when deciding whether a will or a trust will work better for you:

- Your age (younger lends itself more to a will format – older to a trust format)
- Your real estate ownership (probate is a state proceeding – if you own property in more than one state, a separate probate would be needed for each state)
- Your stage in life (if you are still in interim housing mode, you may want to wait on setting up a revocable living trust)
- Your privacy concerns (in Utah, probate is a public proceeding, whereas the trust provisions are private)

Basic Concept Two: Unified Credit and Gifting

The potential tax of gifts and bequests is handled under one federal tax system. The system provides that a certain amount of gifts made either during life or at death are exempt from transfer tax. The term "unified credit" is used to illustrate how much asset value can be transferred without incurring transfer tax liability. Starting in 2011, the estate tax credit is sufficient to permit an individual to transfer \$5,000,000 worth of assets without tax consequences. In addition, it is important to note that gifts of any amount to legal spouses and to qualified charities are generally exempt from transfer tax. Also, note

that spouses combine their exemption so that they together can leave \$10,000,000 irrespective of who owns the assets. This amount is indexed for inflation and so it increases over time.

In addition to the unified credit, tax law permits an individual to give up to \$14,000 worth of assets to another individual per year without incurring transfer tax. This is referred to as the "annual exclusion" from transfer tax. An individual can give up to \$14,000 to as many different individuals as he or she would like without incurring transfer tax. In other words, a wealthy individual could give \$14,000 to every resident of the state of Utah and he would not incur any transfer tax liability.

Thus it is common to see wealthier individuals (those who would otherwise be looking at a taxable estate) engage in a regular annual gifting program where they transfer \$14,000 worth of assets each year to each of their children (and even grandchildren). The hope is that by the time the donor dies, he will have reduced his estate to the value such that his remaining unified credit is sufficient to shield the estate from taxes.