



COMMON QUESTIONS ASKED IN ESTATE PLANNING AND PROBATE

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Can I change my Last Will and Testament at any time? So long as you are competent and understand the nature and extent of your property, the people you are including and/or excluding in the Last Will and Testament, and the effect of your decisions. Even individuals suffering from Alzheimer's can prepare or change estate planning documents so long as they are lucid at the time of execution.

Can I scribble changes on my estate planning documents?

For your changes to be effective, they must be completed with the same requirements of a Last Will and Testament. That requires execution before two witnesses and a notary public and dated. It is always recommended that it be handled by an attorney to ensure its validity.

Do I really need a Power of Attorney and Health Care Surrogate? They are essential parts of every estate plan. They allow individuals to step into your shoes and handle both financial matters and health care decisions on your behalf when you lack the ability. If no one possesses that power, a court may be forced to appoint a third party to make those decisions on your behalf.

How do I handle disbursement of my jewelry? You can either give it away while you are alive, or prepare a tangible personal property document that details each item and to whom you desire it to go at your death.

Revocable Trusts:

Can I amend my Revocable Trust at any time? So long as you are competent and understand the nature and extent of your property, the people you are including and/or excluding in the Revocable Trust, and the effect of your decisions. Even individuals suffering from Alzheimer's can prepare or change estate planning documents so long as they are lucid at the time of execution.

Will I lose my Homestead Exemption if I title my home into the name of my Revocable Trust? Titling your home in your Trust will still allow it to qualify for the "Homestead Exemption" and other exemptions. Be aware that the county may ask you to fill out a "Trust Affidavit" and provide them with a copy of the page (usually page 3 – Paragraph 3.3 – Homestead Rights) of the Trust which grants to you the possessory interest in the residence.

What happens to my tax returns? Because the revocable trust is revocable by you, you will be treated as the owner of the trust for income tax purposes. Accordingly, you will continue to report all items of trust income, deductions, and credits as if you had received or paid them directly--the trust will be ignored for income tax purposes.

Do I need a new taxpayer identification number or EIN? During the grantor(s) live(s) the trust will not have its own taxpayer identification number, instead, it will use your Social Security

number and no tax return will need to be filed for the trust. Once the grantor(s) are deceased the trust will have its own identifying number and will be required to file its own tax return, but again all trust income and deductions will be reported by you.

Do I have to pay capital gains or transfer taxes when I transfer property into the trust? Most funding transfers are made from you to yourself as trustee and are not subject to taxation as they are not being done for any monetary consideration and no proceeds are realized.

How your Trust allows you to avoid Probate? The key to a trust is the separation between the legal title (held by the trustee) and the beneficial ownership of the property. The benefits of a revocable living trust (privacy, avoidance of probate, and protection against future incapacity being the three primary ones) will be realized only with respect to the assets you transfer to or title in the name of the trust. Assets titled in your individual name(s) must pass through probate in order for the beneficial interest to pass to your beneficiary.

Does a beneficiary designation on an account override the terms of my Trust? Yes. If you name Suzy Smith as beneficiary of your life insurance and then say in your Trust that your life insurance goes to John Smith, Suzy will be the one to get it after setting up. You could name your trust as beneficiary of the insurance and then have your trust written to say that John gets it.

How Do We Make Sure Someone Doesn't Challenge My Trust? The best way is to specifically declare that they were left out intentionally. The way you do that is to say something like, "Even though John Smith is my natural heir, I specifically intend to treat him as if he had predeceased me under this trust." You must also decide if John Smith's descendants are also disinherited and if so, say, "...treat him, and his descendants, as if they predeceased me..."

Location of Beneficiaries

How will my Trustee and/or Personal Representative locate the beneficiaries of my Trust and/or estate? If you are concerned that a beneficiary may not be easily located at your death, I would recommend providing your legal counsel with a list of their names and addresses. You will need to update this information as they move around the United States or world.

Copies of Estate Planning Documents

To whom should I provide a copy of my estate planning documents? Your estate planning documents are personal and copies of the documents should not be provided to any third party, excepting a bank or financial institution that requests a copy when retitling your accounts into the name of your Trust. Since it is very common to amend and/or revise your documents over time, the last thing you want is to have multiple documents floating around and people fighting over which document expresses your true intentions.

Who should I make aware that I have prepared estate planning documents? You should make your beneficiaries and the individuals/entities nominated to serve in a fiduciary (Personal Representative, Successor Trustee, Power-of-Attorney and Health Care Surrogate). capacity on

your behalf. I do not recommend providing them with a copy of the documents, unless you need them to act immediately on your behalf, but advising them where they can be found when needed.

Florida Probate

What makes up my probate estate? Your probate estate consists of all assets that you possess at the time of your death that are titled in your individual name. These assets include: Securities, Real estate, interest in a business, etc. Your personal residence is excluded along with two vehicles.

Everyone scares me about having to go through probate? As the old saying goes, would you ask your plumber for advice on an electrical problem? Probate is an effective legal process that can limit creditor claims, protect assets from creditor, and ensure proper distribution of your estate at death.