



# Benjamin Katz Esq. P.C.

## Estate Planning Information Sheet

Choosing which form of estate plan to establish is an important and often confusing decision. Creating a comprehensive plan, properly tailored to your needs and wishes at the outset will avoid significant expense, delay, and uncertainty for your loved ones. This information sheet will answer some basic questions, describe the legal processes involved, the documents used to implement your plan, and the advantages and disadvantages of each type of plan.

### What is a Will?

A Last Will and Testament, commonly referred to as a “Will” is a legal document expressing what actions the Testator<sup>1</sup> of the Will wishes to be taken after their death. Normally, a Will is created to provide for the after-death distribution of property owned by the Testator. The Will should nominate an Executor to administer the estate. It may also name guardians for children and pets, and may create trusts to exert some level of control over the use of money and property left by the Testator (testamentary trusts). In New York, Wills, most commonly, must be signed by the Testator in the presence of two disinterested witnesses for it to be considered valid. Wills have very specific requirements under state law. If someone makes a Will and leaves property needing distribution<sup>2</sup>, the Will ***MUST GO THROUGH PROBATE***.

### What is a Trust?

A trust is an entity formed by a written agreement. Those creating and transferring property to the trust are called the Grantors<sup>3</sup>. Those receiving the property and controlling it after the transfer are called the Trustees. The property will then be used for the benefit of the Beneficiaries. Trusts created during the Grantor’s lifetime are called Living Trusts<sup>4</sup> (as opposed to testamentary trusts created after death). Living Trusts may be either revocable or irrevocable. If revocable, the Grantor may make changes to, add or remove property, or end the Trust at any time. Although there are many reasons to create a Revocable Living Trust (RLT), the most common one is to avoid the probate process<sup>5</sup>. Most of my clients create a Trust in which they are the Beneficiary and serve as Trustee during their lifetimes, giving them full control and use of all property. Irrevocable trusts are usually created for government program eligibility, asset protection, or estate tax avoidance. ***TRUSTS (whether revocable or irrevocable) DO NOT GO THROUGH PROBATE.***

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<sup>1</sup> Also referred to as Creator or Maker.

<sup>2</sup> This does not include jointly owned property or property with named beneficiaries.

<sup>3</sup> Also referred to as Trustor or Settlor.

<sup>4</sup> Also referred to as inter-vivos trust.

<sup>5</sup> Other methods of avoiding probate include naming beneficiaries on accounts/investments, and creating joint ownership of accounts/property with rights of survivorship.

## What is Probate?

Probate is a legal process, established under state law to: determine the validity of a Will, appoint a person or entity to administer the Estate, and to ensure the provisions of the Will are being followed. Following death, the nominated Executor may petition the Surrogate's Court to have the Will declared valid and have themselves formally appointed as Executor. Unfortunately, there are many disadvantages to the probate process. Those include: attorney fees, a court filing fee (which may be as much as \$1,250.00), and delays due to court congestion and procedural requirements. Family members (even if not named) and creditors have the opportunity to contest the validity of the Will, the actions of the Executor and file claims against the Estate. The Executor will be under the scrutiny of the court throughout the process. Finally, the proceeding is public record, available online to anyone interested in knowing what is happening.

## Will v. Trust?

When creating a basic estate plan, individuals and couples most frequently choose between a Will-based plan or a Trust-based plan. Below is a list of some advantages and disadvantages for each choice.

<u>Will</u>	<u>Trust</u>
<u>Advantages</u> <ul style="list-style-type: none"><li>• Less expensive up front to create.</li><li>• Simpler to create.</li><li>• You do not need to re-title property.</li></ul>	<u>Advantages</u> <ul style="list-style-type: none"><li>• More flexible than a Will</li><li>• Takes effect during Creator's lifetime.</li><li>• Avoids probate and all those issues.</li><li>• Provides for incapacity.</li><li>• Protects assets during lifetime.</li><li>• May provide tax benefits.</li><li>• Easily amended.</li><li>• Does not require witnesses to create.</li><li>• Private</li><li>• Named guardians of children recognized immediately upon specified event.</li></ul>
<u>Disadvantages</u> <ul style="list-style-type: none"><li>• Must go through probate.</li><li>• Does not take effect until after death.</li><li>• Easily contested.</li><li>• Easily invalidated if Will lost/damaged</li><li>• Nominated Executor may not be acceptable to Court.</li><li>• Open to public</li><li>• Nominated guardians of children not recognized until after Will is validated.</li><li>• More expensive following death</li><li>• Provides no tax advantages</li></ul>	<u>Disadvantages</u> <ul style="list-style-type: none"><li>• More expensive to create than Will.</li><li>• Property transferred to Trust may need to be re-titled or a new account opened</li></ul>

## Other Estate Planning Tools

As part of your estate plan, it is important to include the following additional tools:

**Power of Attorney** – designates agent for personal and financial matters.

**Health Care Proxy** – designates agent for health decisions.

**Living Will** – expresses end of life wishes.

There are many details involved when deciding to create an estate plan. At **Benjamin Katz, Esq. P.C.** we have the knowledge and experience to navigate you through these perilous waters. **CALL US TODAY!**