

FAQ: Wills & Wishes

Teaching workshops about middle-class milestones, I answer a lot of questions for people. This is one of them.



Question: Should I create a living trust?

Answer: While some people are sold on them for the wrong reasons, trusts can be very useful.

No need to avoid estate tax. A trust can be very useful in avoiding or minimizing estate taxes. However, since the minimum size of a taxable estate was raised to \$5 million, very few people need to worry about estate taxes.

No need to avoid probate. A trust can be used to avoid probate, but generally this is not a good use for a trust. In Texas, a good Last Will can be probated with a minimum of fuss. Frequently, even if there is a trust, the estate must go through probate anyway. This happens when there are assets that were not transferred into the trust.

Manage property for a disabled person. A trust can be very useful for managing the assets of an incapacitated person, such as a parent with dementia. A good Durable Power of Attorney gives the authority to manage a person's assets. However, financial institutions have become wary of accepting a Power of Attorney that they see as 'stale.' This means the managing adult child could at some point find it difficult to conduct business based on an old Power of Attorney. When an adult child takes over business management for the incapacitated parent, that might be the time to move all the assets into a trust.

Qualify for government benefits. A trust can make it possible for a person with some assets to qualify for government benefits without losing all the assets. Many government benefits, such as Medicaid, are only awarded to persons with virtually no assets. This means that a person with some money in the bank or maybe a rent house is disqualified. However, the person needing the benefit may be able to qualify by putting the assets in a trust. The rules and regulations are complex and subject to change, so the trust must be drafted and funded very carefully.

Sources: Texas Property Code Title 9. Texas Estates Code Ch. 751-752. 26 U.S.C § 2010.

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