



WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

Back to Basics: Wills & Revocable Trusts

By Patricia C. Marcin, Esq. ©2014

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Wills and revocable trusts basically do the same thing – each is a document in which you give away your assets to your beneficiaries upon your death. Both can be revoked and changed whenever and as often as you desire. In fact, a revocable trust is also known as a “will substitute.”

Under a will, you can give away only assets that you own in your own name that are not held jointly with right of survi-

vorship and that do not have a designated beneficiary. These are called “probate assets.” A revocable trust can only dispose of assets that are owned by the revocable trust. When using revocable trusts, it is important also to sign what is called a “pour over” Will, which directs the executor to transfer all of your probate property to your revocable trust; the probate assets are then added to the trust’s assets. The trustee of the revocable trust then distributes the trust property as directed in the revocable trust document.



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If you intend to put all your assets in a revocable trust during your lifetime (whether to avoid probate or because of difficult family issues), it is still important to have a pour over will, so that any assets which you may have forgotten to transfer to the trust are transferred at your death and disposed of according to your wishes set forth in the revocable trust (rather than in accordance with state law). For various reasons, you may also create a “dry,” unfunded revocable trust, into which your probate assets are “poured” upon your death; in this case, the assets remain in your individual name during your lifetime.

The decision to pass your assets onto your beneficiaries by use of a Will alone or by use of a pour over Will and revocable trust combined depends on your personal circumstances. In any case, it is important to plan to give away your assets upon your death so that the disposition of your estate is not left to the “mercy” of New York State law, which directs who gets your assets if you don’t. Of course, it’s also important to plan for the purpose of saving estate taxes as well.

If there is a trusts or estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com with your suggestion. I will do my best to cover it in a future column.