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Types of Wills and Trusts

There are many varieties of wills and trusts to fit the needs of each individual. Only a qualified attorney should draft these documents.

A few of the more common documents are listed below.

- **Basic will:** A basic or simple will generally gives everything outright to a surviving spouse, children or other heirs.
- **Will with contingent trust:** Frequently, married couples with minor children will pass everything to their spouse, if living, and if not, to a trust for their minor children until they become more mature.
- **Pour-over will:** The so-called “pour-over” will is generally used in conjunction with a living trust. It picks up any assets that were not transferred to the trust during the person’s lifetime and pours them into the trust upon death. The assets may be subject to probate administration, however.
- **Tax-saving will:** A will may be used to create a testamentary bypass trust. This trust provides lifetime benefits to the surviving spouse, without having those trust assets included in the survivor’s estate at his or her subsequent death.
- **Living trust without tax planning:** Generally, the surviving spouse has full control of the principal and income of this type of trust. Its main purpose is to avoid probate. If required, the trust can also be used to manage the assets for beneficiaries who are not yet ready to inherit the assets outright, because they lack experience in financial and investment matters.
- **Bypass trust:** This type of trust allows the first spouse to die of a married couple to set aside up to \$5,120,000¹ in assets for specific heirs while providing income and flexibility to the surviving spouse. The appreciation on assets in the trust can avoid estate tax.
- **QTIP trust:** A type of trust known as a QTIP trust allows the first spouse to die to specify who will receive his or her assets after the surviving spouse dies. Use of a QTIP also permits the deferral of death taxes on the assets until the death of the surviving spouse. QTIP means “qualified terminable interest property.” The income earned on assets in a QTIP trust must be given to the surviving spouse for his or her lifetime. After the death of the surviving spouse, however, the assets then pass to beneficiaries chosen by the first spouse to die, frequently children of a prior marriage. Even if there are no children of a prior marriage, some estate owners use this type of trust to prevent a subsequent spouse of the survivor from diverting or wasting estate assets. A QTIP trust can only hold certain qualifying property. For this reason, it is often used in tandem with a bypass trust.
- **Qualified domestic trust:** Transfers at death to a noncitizen spouse will not qualify for the marital deduction unless the assets pass to a qualified domestic trust (QDOT). The QDOT rules require a U.S. Trustee (unless waived by the IRS) and other measures that help ensure collection of a death tax at the surviving noncitizen spouse’s later demise.

Note: Additional trusts may be used for current income tax savings or to remove life insurance from the taxable estate, but the above-described documents should generally be considered for a person’s estate plan.

¹ The applicable exclusion amount is the dollar value of assets protected from federal estate tax by an individual’s applicable credit amount. For 2012, the applicable exclusion amount is \$5,120,000.