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Submission date: 26-Apr-2020 05:36PM (UTC+0300)

Submission ID: 1308084958

File name: ,_STRUCTURE_AND_NECESSITY_OF_A_TRUST_AND_WILL.edited.edited.docx (19.64K)

Word count: 1531

Character count: 7609

Purpose, Structure, and Necessity of a Trust and Will

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Purpose, Structure, and Necessity of a Trust and Will

Trust is a relationship where an individual authorizes another party to keep an asset for the benefit of a third party. The individual who grants this is known as the trustor, and the appointed party who holds the asset is known as the trustee. Trust is often established to safeguard the assets of the trustor legally and to ensure that the asset is given to the beneficiary at the appointed time based on the trustor's wishes¹. A will, on the other hand, is a legal document that has all the requests in regards to how an individual wants their properties and assets to be distributed in the event they die². The paper will discuss the purpose, structure, and necessity of having a trust or a will.

Purpose, Structure, and Necessity of a Trust

As stated above a trust is solely created by the settlor for the beneficiary. It helps the settlor to know that in case anything happens to them, their beneficiaries will be well taken care of. The conditions of the trust often depend on the terms that have been put in place. For instance, in the event an individual is unwell, and they have some properties that they would want to leave to their children who at that particular time are younger, the trustor appoints a close relative or friend to be the trustee³. The trustee is given the terms of the trust by the settlor, which can state that the assets in the document should be released when the trustor's children are of age such as 21 years or the assets in question can be used to pay tuition fee.

¹ Magill, R. H. (2019). Estate Planning and Trust Management for a Brave New World: It's All in the Family: What's a Family. *ACTEC LJ*, 44, 257.

² Muller, T. (2017). Wills and foreign country assets. *Personal Finance Newsletter*, 2017(442), 5-5.

³ Rickford, J. (2017). Embezzlement and Other Breaches of Trust.

The trust also protects the beneficiaries who are mentally ill, spendthrifts, or immature and ensures that the asset is not wasted. There are two kinds of trust, discretionary trust, and unit trust. A discretionary trust is a trust where the trustee is given discrete information as to which assets or funds are assigned to the settlor's beneficiaries and when they should be assigned⁴. In this arrangement, the recipient has no right to the trust up until the appointed time, and the assets are not regarded as part of the beneficiary's property. A unit trust is a collective form of investments that are established under a trust deed. It enables one or people to get access to the types of different investments based on the type of fund. The purpose of a trust is to provide asset security and income to the beneficiaries, as mentioned earlier. It also helps one to save on tax as the assets under the trust get tax exemptions. It helps to consolidate an individual's wealth in one place. After the settlor's death, the trust helps to provide management of the settlor's assets through a trustee. Lastly, a trust provides the opportunity of the investment of the assets or properties consolidated in the trust.

The structure of trust comprises of a curator or trustor, the trustee, and the beneficiary. The trustee could be a close-knit relative, a close friend, or a legal guardian. Trust is necessary because it protects the beneficiary's assets and funds from creditors when a beneficiary is going through a lawsuit⁵. It also prevents the surviving relatives from spending and misusing the curator's hard-earned money and properties, leaving the beneficiaries with nothing. A trust maintains the confidentiality and privacy of the beneficiaries and trustees who are involved in the

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⁴ Ausness, R. C. (2017). Discretionary Trusts: An Update. *ACTEC LJ*, 43, 231.

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⁵ Fletcher, Christine. (2019). "10 Reasons Why You Need A Trust". *Forbes*. Retrieved from <https://www.forbes.com/sites/christinefletcher/2019/02/21/10-reasons-why-you-need-a-trust/#3a189f276e28>

trust reading; in that, it is not a public affair. A trust is flexible in that the curator has the power to dictate the terms and the conditions of how their estates and assets will be managed.

If the trustor feels like the beneficiary cannot make good decisions regarding the assets, they have the right to appoint a trustee who can make decisions on behalf of the recipient. Trust is necessary since it helps the family to preserve the wealth generationally because the assets can be reserved even for grandchildren. Additionally, it helps to promote family values in that, and if the family participated in charitable events, then the trust can state that the beneficiary should engage in charitable activities as well. Lastly, trust is necessary because it reduces family conflicts since the trustor has clearly articulated their wishes for their beneficiaries⁶.

Structure, Purpose, and Necessity of a Will

When it comes to creating a will, it is crucial for the person who is drafting the will to have an attorney present. For a will to be justifiable, it has to ⁶be signed in the presence of witnesses. These witnesses should not be family members of the testator; instead, they should be independent witnesses and should be of sound mind. Additionally, they should not be a part of the beneficiaries because it may bring up unwarranted issues. In the case the testator has underage children; they can appoint a guardian for them and put them in the will. Upon the death of the testator, the reading of the will begins, and the executor does this. The executor is an individual who carries out the last wishes of the testator by following the instructions left to them. Before the reading of the will, the executor has to apply for probate first, especially if the deceased property is worth a lot so that they can transfer the property to the rightful beneficiaries⁷. The executor can inherit something from the will as well, depending on the testator's wishes. The appointed executor is often someone who is trusted by the property owner,

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⁶ Kaplan, A., & Liberman, M. (2020). Estate planning for the family business. *Trusts & Trustees*.

⁷ Beyer, G. W. (2018). Estate Planning and Probate Law.

or it could be a family lawyer as well, and their name has to be indicated in the will in the case they are needed to perform any duties. In the case the executor dies before the testator, the will can be changed. Other reasons that could warrant the change of a will are if the owner of the property has grandchildren or if the owner gets divorced. The structure of a will involves the following individuals. The testator is the owner of the property, the executor, and the beneficiaries.

The primary purpose of a will is to grant the testator's last wishes when it comes to the distribution of their assets and also their funeral arrangements⁸. For instance, they can wish to be buried or cremated. In the case one dies without a will, then all their properties will be distributed according to the wishes of the law and not close relatives. It is necessary because it enables one to have reduced taxes over the estates based on the value of the property. It is also necessary because it helps one to provide a better future for their loved ones, in this case, the beneficiaries.

In summation, having discussed the purpose, structure, and necessity of having a trust and a will, it is evident that the main reason why people have wills or trusts is to protect their assets and to ensure that their beneficiaries get something from them in the case of death. I would choose to have a trust over a will because trust becomes effective from the moment it is created. It can be used to distribute assets before the trustor dies or after.

⁸ Elderlawanswers. (2019). Understanding the Differences Between A Will And A Trust.

Retrieved from <https://www.elderlawanswers.com/understanding-the-differences-between-a-will-and-a-trust-7888>

In that case, I am not able to control my affairs any more; my beneficiary can step in on my behalf and continue running the business or managing the properties. A will only becomes effective upon the death of the property owner. A trust does not pass through probate for it to be distributed, meaning the court does not have to inspect the details of the trust, and this, in the long run, saves time and money. In a will, as mentioned earlier, it has to go through probate before the assets are distributed to the beneficiaries to ensure that it is valid, and this can be time-consuming because it may take time to prove the validity of the will. The other reason why I prefer trust to a will is the fact that trust guarantees privacy and confidentiality in regards to who gets what and how much they get. As for a will, most of their readings are usually publicized, and everyone in the courtroom room gets to know what each person received, especially during the probate process.

⁵ References

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