Wills and Trusts Information Sheet

Wills

A will is a basic and important legal document that provides instructions on how an estate will be distributed after death. If the owner dies without a will this leads to "intestacy" where the state decides how to distribute their assets.

Most advisors recommend that wills be reviewed and potentially updated every five years or so. This is especially important when family or financial circumstances change, such as a marriage, birth or death, or when a person important to the farm or ranch leaves the operation.

When preparing a will, landowners often are faced with the challenge of deciding what is "fair" vs. "equal" for their heirs. Treating heirs fairly does not mean treating them all the same way. Instead, it means treating them according to their interests and needs. Dividing assets equally generally makes it harder to pass farms or ranches on to the next generation.

Transfers on Death

Also known as "will substitutes," the Transfer on Death or TOD designation is a simple and low-cost way to transfer assets like joint bank accounts, annuities, and life insurance as well as joint real estate owned with a survivorship rights, usually for spouses and other family members. As the name suggests, the transfer occurs at death without the need for probate and applies to assets that have a named beneficiary. This gives the asset holder a way to specify how much of each of their assets to pass on to their designated beneficiaries.

While TODs often are not recommended by advisors because they only take effect at death so they do not allow for gradual transfers, they are relatively simple to put into effect without additional actions such as creating a will or trust.

Trusts

A trust is a legal tool which allows a third party—or trustee—to hold and manage assets on behalf of heirs, receivers, or other beneficiaries. The trustee pays income to the named beneficiaries according to the instructions of the trustor—or person who set up the trust.

Trusts provide legal protection for the trustor's assets, ensure assets are distributed according to their wishes, and can save time, by avoiding probate for a will, reduce paperwork and, in some cases, avoid or reduce inheritance or estate taxes. They are flexible and can be a useful tool for estate planning and to avoid probate especially for large estates and in situations that involve multiple generations. But even with smaller estates, owners often place their assets in trusts so they can receive professional management.
The Trust document spells out who will receive which assets and when, and what happens to the assets when the Trust period ends. In this way, they are used to transfer assets as well as providing financial security for surviving spouses, children, grandchildren, and other beneficiaries. Almost any kind of asset can be placed in a trust but some assets are easier to manage–like stocks and bonds–than others, like farm or ranch land.

There are many kinds of trusts set up for different periods of time and different purposes. The two main types are living (or inter-vivos) trusts and testamentary trusts.

Living trusts are created by a person who is alive. They can be revocable or irrevocable. A revocable trust is flexible and the most common. Included as part of the taxable estate, it can be cancelled at any time. An Irrevocable trust is not counted as part of the taxable estate. Once assets are put into it, they cannot be removed, and the owner loses access to and control of them.

A testamentary trust is created in a will and comes into play at death. Its purpose is to provide for the management of property after death.

Other kinds of common trusts include:

- Generation-skipping trusts: Trusts that are used to provide income to a generation or two of heirs, with the property eventually passing to individuals two or three generations down the line.
- Life insurance trust: This is a special irrevocable trust that holds life insurance policies to exclude them from the gross estate. When a policy is not in the irrevocable trust and the decedent-maintained control, it is counted as part of the gross estate.
- Special-needs trust: This can be a revocable or irrevocable trust that is formed for a special-needs child, pet, business, real estate, or other property that requires specific and special attention post death.
- Charitable remainder trust: A tax-exempt irrevocable trust designed to reduce the taxable income of individuals by first dispersing income to the beneficiaries of the trust for a specified period of time and then donating the remainder of the trust to the designated charity.