

*Worksheet 4.2***WILLS AND TRUSTS BASICS**

Regardless of the size of your estate, all wills and trusts require basic decisions about who will administer the estate or trust property, whom property will go to, how it will be divided, etc. Use this worksheet to help make some decisions on key elements of your will and trust documents. Factors to consider are noted with each question.

**Executor of the estate:** If all or parts of your estate passes through probate, whom do you want to handle the details of paying your debts and death taxes, and distributing the remaining assets to the beneficiaries named in your will? A spouse is appropriate as well as adult children, close friend, accountant, lawyer, or a bank's trust department. The individual is generally paid. Successors (1 or 2) should be named in case the first predeceases you or is incapacitated or is otherwise unable or unwilling to serve.

Name/Address: \_\_\_\_\_

Successor(s): \_\_\_\_\_

**Trustee:** If you are advised to make use of a trust, whether in your will or in a separate living or insurance trust, you will need to name a trustee to manage investments, pay taxes, make distributions, and so forth. In the event he or she cannot serve, you will want to provide for one or more successor trustees. Many who establish a living trust will become the trustee, with a trusted family member or institution taking over upon death or incapacity.

Name/Address: \_\_\_\_\_

Successor(s): \_\_\_\_\_

Do you want a corporate or individual fiduciary as executor or trustee? Executors and trustees are referred to as fiduciaries because of the high standard of care required of them to manage the assets of another person.

**Guardians for minor children:** For younger parents using this workbook, it is important to accept the possibility that you could, through accident or illness, predecease your children. You may suggest a guardian for your children in the body of your will. A thorough discussion of who might best serve as the guardian of your children in that event should take place before drafting or updating your wills. It is important to identify secondary and tertiary guardians in the event your first choices are unable through changed circumstances to serve or otherwise care for your children. You do not want a judge to decide whom your children will live with.

Factors to consider would include: age of proposed guardians and ages of their children; ages of your children and the number of them who are still minors; and health and financial situations of all parties. If you name a couple as guardians and one of them dies, would you want the surviving co-guardian to act as sole guardian? What if they divorce? Is a brother, sister, grandparent or a close friend the better choice? Be sure to discuss the matter with your intended choices to make sure they are willing — or otherwise feel confident they are able — to serve as guardians for your children. Remember that your will is merely a suggestion to the court, but in all likelihood the suggestion of guardian will ensure your children are cared for according to your wishes.

Guardians for minor children: Who do you think is best able to cope with the raising of your minor children?

Name/Address: \_\_\_\_\_

Successor(s): \_\_\_\_\_

## Section Four: Meeting with Professional Advisers

**Distribution of assets to spouse:** Should all assets be distributed outright to the spouse? Should assets be held in trust for management purposes or incapacity of spouse? Your attorney may advise the use of a testamentary trust to protect your estate tax exemption while providing care for your spouse for her lifetime.

**Distribution of assets to children:** If you do not want your assets distributed outright to your children in the event of your demise, assets should probably be held in a trust. A “testamentary trust” can be created in your will as contingency provisions for underage children. Or, you can use a living trust with contingency provisions. The trustee will take care of minor children’s needs as instructed in the trust. At some future time you will probably want to distribute the assets to the children. At what age? What about a child with disabilities? What about grandchildren?

Many people like to distribute a portion of the estate at several different times during their children’s lives. (For instance, distribute at age 21, at age 25, and at age 30; or ½ at age 30 and ½ at age 35, etc.)

Your preference: \_\_\_\_ % at age \_\_\_\_ ; % \_\_\_\_ at age \_\_\_\_; % \_\_\_\_ at age \_\_\_\_.

### Key Questions:

1. Do you want the estate to pass in equal shares to children?
2. Do you want some to have more because others have had more in the past or to provide adequate opportunities to keep the business in the family?

**Final heirs:** In the event your children predecease you before inheriting your estate, to whom would you want your estate to pass? For example, ½ to the husband’s side of the family (e.g., parents, brothers, sisters, etc.) and ½ to the wife’s side? What if one child predeceases you? Should that child’s share go to a spouse or to grandchildren?

**Charitable bequests:** Would you be interested in making any charitable bequests? Such bequests may reduce your income and estate taxes.

Who are they? \_\_\_\_\_

Percent of estate? Outright gift? Restrictions?

**Individual bequests:** Are there special heirlooms or gifts of family treasures that you want specific individuals to have? (Attach sheets as necessary)

Item To Whom:

Name	Item	Reason

Adapted from Estate Planning for Farmers and Ranchers, University of California, Division of Agriculture and Natural Resources, Pub. 21515, and modified by L. Leon Geyer, Virginia Tech.