

ESTATE PLANNING
WILLS AND TRUST
PROBATE ESTATES

The term “estate planning” generally addresses an overall view of a family’s assets and how those assets are to be treated after death. A will is simply a road map directing a probate court how to distribute those assets through the probate process while a trust is a separate entity created to make that same distribution as provided in a will but privately, without the intervention of probate and the courts.

The choice of a will or trust or a combination of the two is always dependent upon the specific circumstances of the client. For some families, tax avoidance planning is of primary importance and can result in significant savings for the heirs of the decedent. Estate taxes are changeable, year to year, but after use of the available exemptions, the tax rate ranges between 45% and 48% of the taxable estate.

Families with minor children are typically concerned that their children do not come into too much money too soon in the event of an unexpected calamity. Children with special needs need special provisions in their parent’s estate planning documents to make sure that the special needs child does not lose his or her government benefits (which are often crucial to a child’s proper care and support when the parents are gone).

The probate estate process itself can be simple and inexpensive if uncontested. On the other hand, if a will is contested or is improperly drafted, a lengthy, time consuming probate process may be difficult to avoid. Properly drafting and thoughtful prearrangement can avoid many of these pitfalls.

Often many clients will find that a durable power of attorney and a patient advocate designation are as valuable to them as is their will and/or trust. In some circumstances, they are more important. A properly drawn durable power of attorney will help avoid the necessity of a conservatorship or guardianship on behalf of a disabled client. That durable power of attorney if properly drafted can assist in the proper re-alignment of assets of a disabled client prior to death for the purpose of avoiding probate, qualifying for government benefits, caring for the disabled client and making sure that the disabled client’s wishes are fulfilled.