

Trust Connection

A Monthly Report of Trust News and Information

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Smith Salley

PRIVATE TRUST

ABOUT US

Smith Salley Private Trust provides trust solutions for clients who want the peace of mind that their estate will be protected and distributed according to their wishes. Our clients don't need to change their investment philosophy, asset management style, or portfolio holdings, because our trust services integrate seamlessly with the same comprehensive financial planning approach they already enjoy.

How to Read a Will or Trust

Anyone who has read a will or trust knows they are full of legal jargon that is, at least initially, difficult for most laypeople to grasp. The reality is that they're not that complicated after some time is taken to read them a few times and understand the common terms.

What to Look for in Analyzing a Will

Personal Declarations: Most wills begin with basic information: the names of the closest family members of the testator (i.e. the person making the will). This clearly defines references such as "my children" or "my spouse." It also shows that the person made the will with close family members in mind, and that if a family member is not left any property, it was intentional.

Nomination of the Executor: The paragraph naming the executor often comes near the end of the will and names a first choice and one or more alternates. Here's an example:

I hereby nominate, constitute and appoint my beloved wife, Martha Washington, to act as the Executor of this my Last Will and Testament. In the event that Martha Washington shall predecease me or chooses not to act for any reason, I nominate and appoint my friend, William Lee, to act in her place.

The Executor's Bond: Most wills state, either in the clause that names the executor, or separately, that the executor is not required to post a bond. A bond is an insurance policy that protects the estate if the executor steals or squanders estate funds. If the will says no bond is necessary, the estate will save the cost of the policy.

Specific Gifts: A "specific gift" leaves specific items of property to specific beneficiaries, like this: *I give and bequeath to my eldest stepson, John Parke Custis, should he survive me, my bank account at Washington National Bank, account number 1.*

Many wills contain no specific gifts. They simply leave everything to one person, or to several people to share equally.

Gifts of "Personal Effects" or "Personal Property": Many people use terms such as "personal effects," "tangible personal property" or "furnishings" in their wills. Courts commonly define the term personal effects narrowly to mean items that someone wears or carries, or that have some "intimate relation" to the person. The term, "personal property" is usually given its standard legal meaning, which is all property that isn't real estate.

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Conditional Gifts: It's rare, but sometimes people leave property subject to conditions, for example, "I leave \$10,000 to Susan Smith if she goes to college" or "I bequeath \$10,000 to William Smith if he stops smoking."

These gifts can be nightmares for an executor. How long should the executor wait before concluding that Susan isn't going to college or that William has kicked the habit? If Susan doesn't get the money, who does?

If there is such a provision, the best bet is to probably get all the beneficiaries together to try to agree on how to best fulfill the testator's wishes. A probate judge will probably go along with whatever decision is made.

Specific Gifts Listed in Another Document: In some states, it's legal for people to refer in their wills to another document that lists tangible items of property and who is to inherit them. If there's such a list, you'll find something like this in the will:

I leave my personal property in accordance with a memorandum signed by me, which I intend to leave at my death.

If the memorandum, which may take the form of a letter or list, is validly prepared under the governing state's law, it will be treated as part of the will. If such a writing is not recognized under state law, it will not be treated as binding under the will.

Gifts of Money: A gift of a certain amount of money, without a specified source, is called a "general" bequest or legacy. Here's an example:

I give and bequeath to Michael Jones and Sarah Jones, or to the survivor of them, or if they should both predecease me, then to their daughter, Melissa Jones, the sum of \$10,000.00, it being my wish that such sum be used for the education of Melissa Jones.

Gift of the Residuary Estate: After any specific and general gifts, a will usually directs who should inherit the "residue" of the estate — that is, whatever is left after the other gifts are made. Here's an example of a residuary clause:

I give the rest, residue and remainder of my estate to my beloved wife, Claire Jones, or if she does not survive me, in equal shares to my children, Michael Jones and Miranda Jones.

Such a disposition of the residuary can be made outright or in trust.

If the will makes no specific gifts at all, which is the most common scenario, then the residuary clause disposes of everything that is subject to the will — generally, the probate estate.

Children's Guardians: If the deceased person left children under 18 and there is no surviving parent able to raise them, look for a will clause that names a "personal guardian" for the children. This is the person who will raise the children until they are adults.

Trusts: You may find a clause that sets up a trust to take effect at the testator's death. A trust is an arrangement under which one person controls and manages property for another. Trusts created in wills are called testamentary trusts.

The most common kind of testamentary trust is one that a parent sets up for children so there will be someone (the trustee) to manage property if the parents die while the children are still young.

Wills generally set out the terms of the trust: how long it is to last, what the money can be used for, and so on.

Pour-Over Clause: If the testator also created a separate living trust to avoid probate, the will may contain a "pour-over" clause directing that assets passing under the will be automatically put into (i.e. "poured over" into) the trust. Then the trustee will hold or distribute them according to the terms of the trust document.

Payment of Debts and Taxes: An important part of the executor's job is to pay the estate's debts. The will may tell the executor whether he or she is supposed to use a specific source of funds to pay the debts, or to pay them out of the general asset pool.

No-Contest Clause: Some wills contain a no-contest clause, designed to discourage beneficiaries from contesting the will in court. The clause states that if a beneficiary sues, trying to throw out all or part of a will, that person gets nothing. This is controlled by the state law governing the estate.

Simultaneous Death: A clause addressing the case of simultaneous deaths, where the deceased person and his or her spouse die at the same time, is common. Generally, the clause says that the testator is deemed to have survived the other person, so that property does not pass to that person. The point is to make sure the property passes under the deceased person's will, not the deceased beneficiary's.

What to Look for in Analyzing a Trust

The basic terms of a trust can generally be found on its first page. For instance:

- The person who created the trust is often referred to as the donor, grantor or settlor.
- The trustee, or successor trustee, is the person or

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Call us today at
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about working with Smith Salley
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please feel free to contact one of
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your estate.

entity who will hold the trust assets and administer them for the benefit of the beneficiaries.

- **Beneficiaries:** Sometimes the beneficiaries are clearly spelled out. However, it is very common for a trust to benefit a class of people. If the trust states that the assets are held for the grantor's descendants or issue, this means the trust benefits the grantor's children, grandchildren, great-grandchildren, etc.

Other Important Provisions

Does the trustee have to distribute the assets all at once to a specific beneficiary, or does he or she give the money out in installments over time? Perhaps distributions are completely left to the discretion of the trustee. Look to see whether the trustee can distribute both income and principal.

- Do the assets have to be paid to one person, or does the trustee have discretion to distribute to many different beneficiaries?
- When does the trust end? Does it continue until a certain date, or does it terminate upon the happening of an event, such as someone's death? Often, trusts will end on the death of a beneficiary.
- Can the beneficiaries remove and replace a trustee? Under what circumstances?
- Does the trustee have to provide the beneficiaries with accountings? The accounting will allow someone to see what assets are in the trust and who the assets are getting paid to.
- Is the trust revocable or irrevocable? If the trust is revocable, the grantor will be able to change it during his or her life. If the trust is irrevocable, the grantor will not be able to make any changes. If the trust was revocable and the grantor has died, the trust is most likely now irrevocable, even though the name of the trust may contain the words, "Revocable Trust."

Review the Boilerplate, No Matter How Tedious

These often consist of provisions related to trustee powers, closely held stock, and qualified retirement accounts.

Read the Tax Provisions, Which are Even More Tedious Than the Boilerplate

Don't feel like you have to grasp all of them. Speak to an attorney about any questions you may have about the tax implications to get a general idea of what is going on.

The more you read a will or trust, the more familiar the key provisions become. The language does become more familiar over time. An attorney should be hired to help interpret the trust terms — it may be money well spent.

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