

BASIC ESTATE PLANNING, PART 8: CONTESTING A WILL OR TRUST

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Real Wealth® Radio Network

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In our recent columns, we've been discussing the advantages of setting up wills and trusts as part of basic estate planning. One key difference between these two documents centers on the issue of privacy. When a will goes through probate, everybody in the area and whoever wants to can use public records to their advantage. They can see everything that is going on, what kinds of assets there are and who is getting what. In the trust environment only the beneficiaries are in the know.

That brings us into more specifics about a trust and the benefits of a revocable trust. How does contestability work versus a will? What do we mean by contestability? Think about your wishes and desires. Remember how much time you spent designing your will to make sure everything will go according to your wishes. A will is an instruction list to the judge regarding what you hope will happen. However, because a will can be contested in a public environment, anyone can come forward – a neighbor, a relative or a non-relative – and file a claim against your will. This is called “a contest” of the will. It can freeze the assets until that contest is heard, and now public record becomes a real disadvantage to you.

Things work differently with a trust. Technically, you can't contest a trust nor freeze distribution and hold everything up until your claim is heard. With a trust, the only way a beneficiary can try to change the distribution is literally to sue the other beneficiaries. That is not very practical. In fact, many attorneys include what is called “contesting clauses.” This is a way for the trust grantors, Mom and Dad, to reiterate that what is on paper are their wishes and they are final. It is designed to dissuade someone that thinks the distribution isn't fair from pursuing a lawsuit with the remaining beneficiaries. You don't want to be vulnerable to the possibility that someone can come in and change that distribution after the fact.

If you include the contesting clause language in the trust document, it really empowers the trustee to say to the person who's trying to change the distribution, ‘Hey, they've already thought of this. If you come forward and you contest this, even if you are potentially successful, mom and dad have included some language that will reduce your claim even further, maybe even to a single dollar.’ That might seem a bit harsh, but about 99 percent of the people we see today feel that is appropriate language to use, whether in close families or not-so-close families. It is simply a disincentive to try to change Mom and Dad's wishes after they are gone.

Remember, a team of *Real Wealth®* Advisors can easily assist you with your wills and trusts and can guide you through the entire estate planning process. You will need a qualified attorney who has spent a lot of time working in this area. Instead of a general practitioner, you want somebody who is focused on estate planning and family issues. You will also need a financial advisor who can help you best take advantage of your individual financial circumstances.

About *Real Wealth*® Radio

Jim Silbernagel and **Tony Jasen** lead Wisconsin's only statewide, homegrown *Real Wealth*® Advisor Network and have been conducting their Financial Talk Show since 1990. They have garnered a reputation as down-to-earth financial professionals who look well beyond the obvious product-driven environment associated with Financial Planning to the *real* life issues of wealth. Their vision is to educate their listeners on the deeper issues of wealth management and its relationship with their life, specifically their stage in life, and to help people maximize life from *Real Wealth*®.

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