



SAN MATEO COUNTY LAW LIBRARY

RESEARCH GUIDE #14

WILL, PROBATE & TRUST

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

WHAT IS A WILL?

A will or testament is a legal document by which a person, the testator, expresses his or her wishes as to how his or her property is to be distributed at death, and names one or more persons, the executor, to manage the estate until its final distribution

WHAT IS PROBATE?

Probate refers to the process whereby the decedent's debts may be settled and legal title to the decedent's property held in the decedent's name alone and not otherwise distributed by law to heirs and beneficiaries. If a decedent had a will, and the decedent had property subject to probate, the probate process begins when the executor, who is nominated by the decedent in the last will, presents the will for probate in a courthouse in the county where the decedent lived, or owned property. If there is no will, someone must ask the court to appoint him or her as administrator of the decedent's estate. Often, this is the spouse or an adult child of the decedent. Once appointed by the court, the executor or administrator becomes the legal representative of the estate.

WHAT IS A TRUST?

A trust is a relationship whereby property is held by one party for the benefit of another. A trust is created by a settlor, who transfers property to a trustee. The trustee holds that property for the trust's beneficiaries. A trust can be created during a person's lifetime and survive the person's death. A trust can also be created by a will and formed after death. While there are a number of different types of trusts, the basic types are revocable and irrevocable.

Revocable Trusts

Revocable Trusts, often called *living trusts*, are created during the lifetime of the trustmaker and can be altered, changed, modified or revoked entirely. In these Trusts, the trustmaker transfers the title of a

property to a Trust, serves as the initial Trustee, and has the ability to remove the property from the Trust during his or her lifetime. Revocable Trusts are extremely helpful in avoiding probate.

Irrevocable Trust

An Irrevocable Trust is one which cannot be altered, changed, modified or revoked after its creation. Once a property is transferred to an Irrevocable Trust, no one, including the trustmaker, can take the property out of the Trust.

BOOK REFERENCE:

Behind desk:

- Nolo's Simple Will Book – KFC 203 .Z9 C54

Aisle :

- Make Your Own Living Trust - KF 734 .C58

Aisle 38:

- California Practice Guide: Probate - KFC 205 .A6 R6 v. 1&2
- Drafting California Revocable Trusts - KFC 194 .L58 D7 v. 1&2
- California Trust Practice - KFC 188 .H37
- California Wills & Trusts - KFC 201 .A65 C355 v. 1,2,3
- California Wills & Trusts Forms - KFC 201 .A65 C35 v. 1,2,3

Aisle 39:

- How to Probate an Estate in California - KFC 205 .N57

ONLINE REFERENCE:

Ask a librarian for access to electronic sample templates for living trust through Nolo Library at EBSCOhost Research Database.