

# PLANNING *for Today's Concerns*

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## What's Not to Like About an I Love You Will? Plenty.

An “I Love You Will” is a last will and testament in which the testator—the person who makes the will—leaves everything to his or her spouse. If you have thought about making a will in the past, you likely considered this approach. Perhaps you have already created such a will.

While an I Love You Will may be appropriate for certain situations, there are several potential problems you should take into account. First, it could unintentionally disinherit your children. How? Think about what would happen if you passed away and your spouse, who has inherited your assets through the I Love You Will, remarries and creates the same type of will. If your spouse passes away before his or her new spouse, the new spouse would inherit these assets. That is, your children might receive nothing.

Of course, an I Love You Will shares the limitations of basic wills in general. For example, if the surviving spouse develops Alzheimer's disease or another form of dementia, and no advance directives were created, estate assets may fall under the jurisdiction of a guardianship or conservatorship court.

In that case, your wishes and those of your surviving spouse may be thwarted.

An I Love You Will also ensures your estate will have to go through probate. The probate process can take several months (or considerably longer) to complete. During the probate process, your spouse may be unable to access estate assets, which could make it difficult to pay expenses such as a mortgage, homeowner's insurance, property taxes, automobile loans, credit card bills, and more. In addition, probate is a public process, meaning anyone can discover information about your assets and debts that you would have wanted to remain private. Finally, the costs associated with probating an estate can be significant.

An I Love You Will may sound like a good idea, but to ensure your wishes are carried out and your assets are distributed efficiently to your loved ones, you may want to consider a trust-based estate plan. We invite you to contact us at your earliest convenience to discuss your options.





## If Your Children Have Turned 18, They Need Their Own Legal Documents.

When your children turn 18 they are legal adults. They might not act like adults all of the time, and you may still be supporting them financially, but in the eyes of the law they are indeed adults. This means that you can no longer make certain decisions for them, including health care decisions. Furthermore, you can no longer obtain medical information about your adult children without their authorization—even in an emergency.

Consider the following scenario. Your son is away at college and gets severely injured in a car accident. When you become aware of what has happened you immediately call the hospital for information about his condition, but nobody will tell you anything. This is because the law—specifically, a statute enacted in 1996 called the Health Insurance Portability and Accountability Act (HIPAA)—prevents the disclosure of a patient's health information without the patient's consent. The hospital in question could be prosecuted for violating HIPAA guidelines.

This is why your adult children need a legal document called a HIPAA Release. It allows your adult children to list the people who are permitted to receive medical information about them.

Another crucial legal document your adult children need is a Power of Attorney for Health Care, which is also called a Health Care Proxy. It allows them to name a person they trust to make health care decisions on their behalf if they cannot do so themselves. Medical decisions covered by a Power of Attorney for Health Care can include the types of treatments allowed in an end-of-life situation, such as the use of a feeding tube, as well as do not resuscitate orders.

Similarly, a Power of Attorney for Finances allows your adult children to designate a trusted individual to make financial decisions if they cannot make them on their own.

If your adult children have their own Powers of Attorney for Health Care and Finances, and they name you as their agent in the documents, you will be able to make medical and financial decisions on their behalf if they become incapacitated. If you are named in your adult children's HIPAA release, you can get medical information about their condition in an emergency.





## Be Sure to Fund Your Revocable Living Trust

Funding a revocable living trust involves retitling your assets into the name of the trust. Basically, a funded trust “holds” assets of your choosing to accomplish your planning goals. The consequences of an unfunded or improperly funded trust include:

- Your trustee cannot manage assets held outside trust. If you were to become incapacitated, for example, a court-supervised guardianship or conservatorship might be required to manage these assets

- Assets held outside the trust will have to go through probate. Avoiding the delays, frustration, and needless expense of probate is one of the main benefits of creating a trust in the first place
- Your assets may not go to the people you want to receive them after you pass away

In short, to ensure your trust-based plan accomplishes its goals, your trust must be properly funded.

## The Types of Trusts – Which one is best for you?

You have heard many people refer to trust as a great planning tool for your estate. It provides opportunities for so many different things, such as long-term care planning, tax planning, and probate avoidance. While you consider meeting with an attorney to discuss your options, you may want to have a basic understanding of several of the most common types of trusts.

### Revocable Trust

A revocable trust is one of the most common types of trusts. It allows the trust creator to maintain control of all trust assets. After establishing a revocable trust, the trust creator can amend or revoke the trust at any time. Since the trust creator can amend or revoke the trust at any time, he or she is considered to still own property placed in a revocable trust for tax purposes. This means that the property in the revocable trust is still subject to estate taxes. This trust also does not protect

assets for long-term care costs, but it does help to avoid the probate process for the creator.

### Irrevocable Trust

Another common trust is an irrevocable trust. An irrevocable trust has restrictions on amendments and generally cannot be revoked. Once a person places assets in an irrevocable trust, the assets no longer belong to him or her. Property placed in an irrevocable trust is no longer considered available for the purposes of long-term care protection and, depending on your circumstance, could be a great way to protect the value of your assets for long-term care planning.

### Family Protection Trust

Another trust that can be either revocable or irrevocable. This trust is often used by parents to help leave assets to their children in a protective way.

(CONT.)



## The Types of Trusts – Which one is best for you? (Cont.)

This trust can shelter the inheritance from the child's marital issues and allow the funds to be passed down through the generations.

### **Supplemental Needs Trust**

This trust is commonly for disabled individuals or individuals with special needs. This trust is used to protect the inheritance for one such individual so that they can maintain any of the government benefits that they are receiving at the time of their inheritance. This trust is funded with money from a third party and not funds directly owned by the disabled individual.

### **Special Needs Trust**

This trust is commonly for disabled individuals or individuals with special needs. This trust is funded with the individuals' personal assets in an effort to maintain any of the government benefits that they are currently receiving. This trust is funded with money directly from the disabled individual.

### **Credit Shelter Trust**

Credit shelter trusts, which may also be referred to as bypass trusts or family trusts, are employed for the purpose of transferring assets while avoiding estate taxes.

The trust creator will have the documents drafted to create the trust, and then include a provision in his or her will that leaves assets up to the estate tax exemption to the trust. Even if the money in a credit shelter trust appreciates, it is never subject to estate tax.

### **Irrevocable Life Insurance Trust**

Another common trust is the irrevocable life insurance trust, which is commonly referred to as an "ILIT". The ILIT is a type of irrevocable trust that is specifically designed to hold and own life insurance policies. The main purpose of the ILIT is to remove the value of your life insurance policy from your taxable estate. The assets in ILITs can be transferred to beneficiaries immediately in order to pay for any estate costs. One drawback to the ILIT is that, once you have transferred your life insurance policy into it, you cannot borrow against the policy or change your named beneficiary. In addition, you cannot be a Trustee of an ILIT, otherwise, you will be deemed to have incidents of ownership of the life insurance and thus defeat the purpose of the trust.

So, with this basic knowledge, schedule your appointment today to learn more about the types of trusts that exist and the best options available so that you can start saving those hard-earned assets for the future!