

WILL VS. LIVING TRUST

Estate Planning is the process of arranging one's affairs and providing instruction and direction for the distribution of your remaining assets upon your death. The most common estate planning instruments are Wills and Living Trusts.

WILL

A Will is a written document in a special form by which you specify your desires for the disposal of your property upon death. A Will does not take effect until you as the testator dies. At this time the Will is filed with the Probate Court, and the person named in the Will as Executor takes over your financial affairs under Court supervision. Assets are gathered and listed; debts are listed and paid; taxes are determined and paid. When all is complete (a six to twelve month process), the Executor distributes property to whomever the Will provides.

LIVING TRUST

A Living Trust is a Trust set up and operational while you are still alive. All assets are transferred into the Trust. The Trust then owns all property and not you individually. You may act as the Trustee during your lifetime and control the assets on behalf of the Trust. As Trustee, you have free access to all of the Trust assets. This type of Trust does not file income tax returns during your lifetime, nor does it provide protection against creditors.

The Trust continues upon your death. A Successor Trustee identified in the Trust will take over control of the Trust and have the same authority you had as the original Trustee. If the Trust is to terminate upon your death, the Successor Trustee will collect Trust assets, pay the debts and taxes, and distribute property to the proper place. All of this is done without Court supervision. Nothing is filed with the Court.

WHICH DO YOU NEED?

The determination of whether to choose a Living Trust or a Will depends on a number of factors. In general, persons who do not own any real property and have a limited estate the entanglement of the probate process is minimal. For people in this category, it is usually recommended to have a simple Will. For those who own real property and have a larger estate it may be more advantageous to have a Living Trust.

In some cases probate can be more expensive because of the possibility of more filings and notices, and sometimes delays based upon the necessity of getting Court approval. Administration of a Living Trust is usually easier and more informal upon death than the probate of a Will. A Will must be filed with the Court while the contents of a Living Trust remain private. On the other hand, it is very easy for someone who becomes Trustee after the death of the settlor to steal from the Living Trust since there is no Court supervision. A Living Trust may be more of a hassle during life since all assets are part of the Trust. When transferring any asset it must be done as Trustee of the Trust.

Regardless of which estate planning tool is used, it is imperative that you have an estate plan in place. To die without a plan (intestate) leaves the distribution of your estate up to the State. The State must follow very specific guidelines and the distribution will inevitably take much longer and may put a strain on the heirs.

**Any One of the Following Factors Could Cause You To Prefer
A Trust Over A Will:**

USE A WILL	FACTORS TO CONSIDER	USE A TRUST
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Young/Under 35-----**Age**-----Older/Over 50

Good Health-----**Concern about Incapacity/Probate**-----Poor Health

Simple-----**Family Situation**-----Complex

Low-----**Desire for Privacy**-----High

Small-----**Size of Estate**-----Taxable or nearly so

None-----**Out of State Real Estate**-----Any

Up-to-Date Will-----**Current Status**-----Simple Will or None

None Needed-----**Desire to Protect Family**-----Strong Desire

Little or None-----**Likelihood of Contest**-----Some Chance

For more information on the benefits of a Will or Living Trust, please contact the law office.