

Abstract: Wills and living trusts are the building blocks of a sound estate plan. Yet many people are confused about the benefits and limitations of each, not to mention the rigors of probate. This article discusses why a will guarantees probate and a living trust will keep assets out of a probate court.

Compare the Benefits Of Wills and Living Trusts

Wills and living trusts are the building blocks of a sound estate plan. Yet many people remain confused about the benefits and limitations of each, not to mention the rigors of probate. Before you begin planning your estate, or if you're now reviewing your plan, take time to brush up on the fundamentals.

Distribute Your Assets As You Wish

A will's primary function is to administer your assets as you wish when you die. If you die without a will, all individually owned assets -- those that are not held in a trust -- will pass to your heirs according to the laws of intestacy as administered by a state court. Thus, chances are the court will divide your assets not according to your liking.

If you and your spouse jointly hold assets, either in joint tenancy with right of survivorship or in tenancy by the entirety, those assets will pass to your spouse (or other surviving joint owner) when you die. But if your spouse doesn't have a will when he or she dies, the intestacy laws -- not your spouse's wishes -- determine who inherits what. Thus, it's critical that you and your spouse each have a will.

Guarantee Probate With a Will

When doing estate planning, many people assume that a will can keep your estate out of probate court. Actually, the opposite is true: Having a will guarantees that your estate will go to probate court. After your death, all the assets your will covers must pass through probate before the court can distribute them to your heirs. Assets a will doesn't cover or aren't subject to probate include:

- Insurance policies,
- Qualified pension plans,
- Annuities,
- Property held in joint tenancy or in tenancy by the entirety, and
- Property held in certain trusts (as long as the estate itself is not a beneficiary).

Probate proceedings vary from state to state, and some are more complex and formal than others. For example, in some states, if your assets are valued at less than \$50,000, you may avoid probate by using a small-estate affidavit with instructions for delivering the assets to your heirs.

If you own real estate in more than one state, you'll probably have to initiate probate in each state. Most probate courts take the following six steps:

1. Admit the will to probate and determine its validity,
2. Notify the decedent's heirs and beneficiaries of the proceedings,
3. Inventory and appraise the decedent's assets,
4. Make sure all creditors are paid,
5. Pay state inheritance tax and federal estate tax, and

6. Distribute assets to heirs and beneficiaries according to the will's instructions.

This process can take months or years, and can be costly. Expenses may include bond premiums and fees for court filings, attorneys, appraisals, and inventory.

Don't forget that probate is also a matter of public record. Anyone can go to court and view a decedent's probate file containing detailed financial records and estate planning documents.

Avoid Probate With a Living Trust

A living trust is revocable. This means you can revise or cancel it and change trustees and beneficiaries during your lifetime. As its name implies, it's effective during your lifetime. It holds your assets for the benefit of one or more beneficiaries, which can be anyone or any entity you designate, including yourself. You appoint a trustee (who may also be yourself) to manage those assets according to your instructions or guidelines. If you appoint yourself trustee, you'll also need to appoint a successor trustee to manage the assets when you die or if you become incapacitated.

Like a will, a living trust conveys your instructions on how to allocate your assets when you die. You can also provide that certain assets remain in the trust so your trustee may distribute them during a specified time. Unlike a will, assets held in trust don't have to go through probate. Thus, the assets get distributed to beneficiaries immediately and with little expense.

To cover all assets that you didn't transfer to your living trust, such as items of sentimental value, create a pour-over will. A pour-over will provides that any individually owned assets are "poured over" to your trust at death.

A living trust doesn't create adverse income tax or property tax consequences during your lifetime. You must report all income your trust assets generate on your individual income tax return.

Funding a Living Trust

After you establish a living trust, transfer your probate-type assets into it. In general, transferring bank accounts, securities, certificates of deposit and mutual fund accounts may require only a letter of instruction or a certification of specific trust provisions. Transferring other assets, such as tangible personal property, real property or business interests, can be more complicated and requires an attorney's help.

Seek Professional Guidance

Don't take the risk of planning your estate without professional assistance. Smart planning today can save your loved ones time and money in the future. Please give us a call if you have questions on wills or living trusts.

What Are the Differences Between Wills and Living Trusts?

| | Will | Living Trust |
|--|-------------|---------------------|
| Contains instructions for distribution of assets at death? | Yes | Yes |
| Subject to probate? | Yes | No |

Able to appoint a guardian for
minor children?

Yes

No

Revocable?

Yes

Yes