Wills and Living Trusts
an explanation and a brief comparison
Part Three

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If you set up a living trust typically you will wear all three hats. You will be the trust maker, the trustee, and the beneficiary. You will continue to manage your own finances as you have been, you will continue to use your own social security number with financial institutions, and you will continue file your own 1040 tax return. In effect nothing has changed.

The benefit of all this is that once your trust is set up and funded it allows for a relatively easy and streamlined transition should you become incapacitated or die, or go on a two year Peruvian excavation as in my example above.

In your trust you designate who will step into your shoes as your successor trustee and manage your finances for your benefit.

If you pass away your trustee will follow your instructions relating to how your property should be distributed, without any court supervision, assuming of course that the trust has been fully funded.

Trust funding is an important and yet often overlooked part of trust planning. After the trust is signed it is important to transfer assets out of your name and into the name of the trust. This is because the trustee can only manage those assets that have been put into the trust.

In my story I funded my living trust with the two hundred thousand dollars that I gave to my friend (my trustee).

Had I only created the trust but not given my friend the two hundred thousand dollars with which to use to follow my instructions he would not have been able to pay my bills or my son's tuition. If he ran out of money before I returned in two years he would not be able to go into my bank account and get more money.

Another benefit of trusts is that they are generally more difficult to contest than wills because, for example, it's harder to claim that a grantor lacked capacity or understanding of a trust that they have managed for many years than to make that claim with regard to a will that was signed on one particular day. Also, with a trust administration there is no convenient forum in which to raise challenges. There are no probate hearings and no notices of hearings which can sometimes serve as an invitation to come and object to what is transpiring.

Part 4, the conclusion of this article, continues with a discussion of the benefits of trusts and pushes back against some criticisms of trusts.

Portions of this article are excerpted from my book LegacyCare – A comprehensive and holistic approach to creating successful Estate Plans.

If you have any Estate Planning questions or would like a comprehensive review of your situation, risks, and potential solutions, feel free to get in touch. My contact information is listed below:

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You can also schedule a 30 minute telephone call or Zoom conferencing call by clicking on the link to my Calendar App and selecting a time slot that is most convenient for you.