

Wills and Living Trusts
a brief explanation and comparison
Part Two

By: Richard A. Selinger, J.D., LL.M

Here's a little story I made up to describe how a trust works. I like explaining legal concepts with little stories because I find that people understand them better and remember them longer.

So let's pretend that I am an archeologist and I just got a call offering me an opportunity to join a two year archeological dig in the very remote jungles of Peru and if I want to accept I have to leave in one week. Well for me this is the opportunity of a lifetime. Of course, I say yes and then panic thinking how am I going to get organized enough to leave in a week.

I run over to my next door neighbor who is also my best friend and I explain to him my dilemma and ask him if he would look after my place while I'm gone. I tell him I will have no internet or phone service in the jungle and will for the most part be unreachable for the next two years.

I give him two hundred thousand dollars and ask him to use it to pay my mortgage, insurance, taxes and other bills while I'm gone. I also explain to him that I've been renting out my basement apartment as an air b and b and that I have bookings for the next three months that I can't cancel. He tells me not to worry and that he will take care of everything and that I should go and enjoy the excavation.

"One more thing." I say to him. "My son is in college and my deal with him is that I'll pay his tuition and his expenses so long as he maintains a B average, but I'm not going to pay all that money if he's just going to goof off in college. So can you look at his transcript each semester and if he has a B average pay his tuition and living expenses?" "Absolutely," he says to me.

We also agreed that if for whatever reason he was unable to handle everything that his wife could step in and take over those duties.

So, there you have it, whether I knew it or not I just created a trust, a contract or an agreement. I am the trust maker, because I created the trust. My neighbor and best friend is the trustee because he is going to manage the assets that I put into the trust (the two hundred thousand dollars) and he is going to manage it according to my very specific instructions. I am also a beneficiary of the trust because the money is being used for my benefit – to pay my bills; and my son is also a beneficiary because the money is also being used to pay his tuition and living expenses.

This story, of course, is for illustrative purposes only. I would never recommend that anyone set up a trust in this fashion, for so many reasons. For example, because the money I gave my friend is sitting in his personal bank account, and not in a trust account, it will be available to his creditors, and if he died it could potentially be distributed to his heirs.

I hope you enjoyed this little story and that it was helpful in explaining the concept of what a trust is. Part three of this article explains the benefits of trusts and the concept and importance of trust funding.

*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:

Email: Richard@SelingerLawFirm.com

Web site: www.SelingerLawFirm.com

Telephone: (303) 442-4600

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.