

Wills and Living Trusts a brief explanation and comparison

Part One

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

One of the first considerations when planning an estate is to decide whether in your particular situation it is best to use a will based estate plan or a living trust based estate plan.

A will, also known as a last will and testament, is one of the most common estate planning documents. It has three main functions, the first allows you to direct who receives your assets when you die. With a will you can leave assets to individuals, charities and other entities, either outright or in trust.

The will's second function allows you to name guardians for any minor children you might have and, finally, the will allows you to name a personal representative, also known as an executor, who has the responsibility of making sure your wishes are carried out as expressed in your will.

When you use a will to leave money and other property to someone, the transfer doesn't just happen automatically. It happens through a court oversight process called probate, where a judge, magistrate or other court officer makes sure that all of your bills are paid, and other obligations are satisfied. This must be done before any money can be distributed to your beneficiaries.

The court also gives the opportunity to any interested party to contest the validity of the will before any money can be distributed to your beneficiaries.

In my view, and I think in the view of most practitioners, a trust administration is favorable to a probate because, as I put it, "probate costs more, takes longer and is totally public," which means that anyone can get a copy of your will, see how much you had through the inventory, which is filed with the Court, and see who you left your property to. Trust administrations on the other hand are private.

Another difference between a will and a trust is that a will goes into effect at your death. It has no legal effect during your lifetime. Whereas a living trust goes into effect the moment you sign it, and it works during your lifetime.

The laws that govern wills and trusts are different too. If you want to learn about wills you go to the property law section of the law library because wills are governed by property law. If, however, you want to learn about trusts you go to the contract section of the law library because trusts are a type of contract and are governed by contract law.

The three parties of a trust agreement are (1) the trust maker, also called a grantor or a settlor, who creates the trust; (2) the trustee, who administers the trust and carries out the instructions of the trust maker; and (3) the beneficiary, who benefits from the trust.

Part two of this article begins with a little story I made up to describe how a trust works. I like explaining legal concepts with little vignettes because I find that people understand them better and remember them longer.

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.