

WILLS AND LIVING TRUSTS -- THE TWO BASIC ESTATE PLANNING TOOLS

Estate planning is important for two reasons. With proper planning you assure that your property will pass to your spouse, children, and other heirs only in accordance with your wishes. Also, estate planning will save your children and other heirs a substantial amount of estate taxes. Estate taxes can run as high as 55 percent!

Wills and living trusts are the two basic estate planning tools that are available to help you achieve your estate planning objectives. Each one has advantages and disadvantages that you must weigh. Moreover, each family is unique. What works best for your friends may not work best for you. Only you and your spouse (if you are married) can evaluate and determine whether wills or living trusts best suit your needs.

What Are Wills And Living Trusts?

A will is a written document you sign in the presence of at least two witnesses and a notary. In a will, you appoint someone to act as your executor. After you die, the executor must implement the instructions contained within your will regarding the disposition of your property.

A living trust is also created by a written document signed by you. But instead of continuing to own property in your own name, you transfer your property into a trust while you are living (hence the name living trust). Furthermore, you appoint someone to act as trustee. During your life, you may be the trustee. After you die, the successor trustee will implement the instructions contained within your living trust regarding the disposition of your property.

What Are the Principal Advantages of Wills?

Wills offer two principal advantages over living trusts. First, a will may enable your surviving spouse to avoid Medicaid "spend-down" requirements. A will also reduces the time during which creditors can make claims against your spouse's estate.

What Are Medicaid "Spend-Down" Requirements?

Medicaid is a government program that pays for medical services to disabled persons, regardless of their age. As you no doubt know, medical services can cost many thousands of dollars. Before the government will pay for

these services, it will require you to spend all your assets (hence the term spend down), except your home and \$2,000. As you can well imagine, due to the cost of health care, Medicaid spend-down requirements can devastate a family's finances. However, through a special trust that is inserted within your will, called a Supplemental Needs Trust, assets you leave to your surviving spouse may be protected from the Medicaid spend-down requirements. The Supplemental Needs Trust can protect your surviving spouse from the Medicaid spend-down requirements only if it is established as part of your will.

How Does a Will Eliminate Creditors' Claims?

A special statute, known as the Probate Act, requires creditors to assert claims against a deceased person's estate within six months after probate begins. Thereafter, unasserted claims are wiped out.

What Is the Principal Disadvantage of Wills?

Wills have two principal disadvantages--the time and expense of probate and the difficulty of changing a will.

Probate is the court process of validating and implementing a will after a person dies. For an estate worth \$1,000,000, the average cost would be approximately \$10,000, and the average time would be approximately one year.

To be valid, wills must be executed in accordance with certain formalities. They must be signed in the presence of a notary and two witnesses and must contain special language indicating that the person signing the will is of "sound mind and body." People who frequently change their mind regarding their estate plan may find this process cumbersome.

What Are the Principal Advantages of Living Trusts?

Living trusts avoid the two principal disadvantages of wills. By using a living trust, your survivors will avoid the time and expense of probate. In addition, living trusts are easier to amend than wills.

What are The Principal Disadvantages of Living Trusts?

Unlike wills, living trusts leave your surviving spouse vulnerable to Medicaid "spend-down" requirements. Also, unlike wills, a specific may not exist in

your state to cut off creditors' claims after a certain time period. Living trusts may also involve more paperwork than wills during your lifetime. For example, moving money in and out of a bank account owned by your living trust involves more paperwork than moving it in and out of your personal bank account. Finally, spending assets during your lifetime that are owned by your living trust is more cumbersome than spending assets you own in your name.

Conclusion

Contrary to what you may have read in advertisements seeking to sell wills or living trusts, each has its advantages and disadvantages. For best results, you should consult an attorney with estate planning experience who is willing to help you select the method most appropriate for your needs.