

## **Estate Planning: Living Trust vs. Simple Will - Which Do You Need?**

by Shawn Christopher

Estate Planning, put simply, is the process of arranging one's affairs for when they pass away. This can usually be accomplished through the use of living trusts and wills. To most, the concept of estate planning sounds relatively straightforward. You probably feel that you should dictate how and to whom your assets are distributed after you pass away, with little concern for any other issues that may arise.

The reality of estate planning, however, is not always so simple. There are a number of factors to consider when preparing an estate plan, including, but by no means limited to, the following:

- The value and types of your assets
  
- Your current and future income
  
- Your distribution desires
  
- Your mental and physical condition
  
- Other objectives, such as leaving a legacy, providing for a charity, taking care of your children or grand-children, or providing for someone with special needs

The most common estate planning instruments are wills and living trusts. There is a common misconception about the need to have a living trust. Many assume that they only need a simple will to best take care of their affairs when they pass away, and that only the wealthy need to have a trust. While this may be true in some instances, it often also leads to unexpected results.

### **Wills**

A will is a document that lists how you would like your estate and affairs handled upon your death. The process by which this is accomplished is called probate, which is when a will is submitted to a court for administration after your death. The executor of the will, usually a person named in the will, is responsible for managing the affairs of the estate as it progresses through probate. The court will oversee your estate, payment of your outstanding obligations, and distribution of your assets according to the terms of your will. This process typically takes a number of months at a minimum to complete, usually involves your executor having to hire an attorney to handle the entire process, and is quite

expensive for the estate. Further, since your will is submitted to the court, it becomes a public record for the entire world to see, which is problematic for those who desire a sense of privacy over their financial affairs.

## **Living Trusts**

A living trust is also a document that details how you would like your estate and affairs handled after your death. However, unlike a will, a living trust does not require your heirs to submit to the probate process. The trustee of the trust, usually the person or company identified in the trust to handle the affairs of the trust, is responsible for managing the trust estate until the trust terminates pursuant to the terms of the trust. The terms of the living trust usually describe how one's assets are to be distributed. Further, this distribution can occur over many years if you so desire, thereby allowing you to retain a measure of control over your assets even after your death. You may also be able to place other restrictions over your assets, which can help to protect the assets from the creditors of your heirs or to ensure that your goals and objectives are met. Moreover, since your living trust is not submitted to a court, the terms of your living trust are kept out of the public domain.

## **Which Do You Need?**

The determination of whether to choose a living trust or a will depends on a number of factors. In general, in Nevada, the main factor to consider is the value of an estate. For persons who do not own any real property and have an estate worth less than \$20,000.00, the entanglement of the probate process is minimal. In such a scenario, only an Affidavit of Entitlement is needed to transfer assets. For people in this category, it is usually recommended to have a simple will. For those who own real property or have an estate worth more than \$20,000.00, probate can get more complicated and costly. In these situations, it is usually advantageous to have a living trust. While it is usually less expensive to prepare a will than it is to create a living trust, this minimal savings is more than offset by the expense and burden of probate. However, as with most things that deal with your legal rights, your unique present and future state of affairs will dictate how you should best plan your estate.

In general, the main advantages of having a living trust instead of just a simple will are as follows:

1. Minimize Probate - If properly funded, probate can be minimized, if not entirely avoided, by using a living trust.

2. Tax Planning - There are limits on the exemptions one can claim from your estate having to pay Federal Estate Taxes.\* For married couples, proper use of certain clauses in your living trusts can maximize the benefits of these exemptions, thereby saving more money for your heirs. \*For 2008, the annual Federal Estate Tax Exemption is \$2,000,000.00 per person. It is \$3,500,000.00 per person for 2009. The exemption is unlimited for 2010. However, unless Congress adopts new limits, the Federal Estate Tax Exemption in 2011 will only be \$1,000,000.00 per person.)

3. Protect Assets - While the creator(s) of a living trust generally will not be able to protect their assets from their own creditors simply by placing their assets into a living trust, with proper drafting, you can protect the assets included in the living trust from the creditors of your heirs.

4. Special Circumstances - One of the better features of living trusts are their flexibility. You can prepare a living trust to accommodate all types of unique situations, such as the special needs of an heir, desire to regulate the manner in which distributions are made to an heir, etc. . .

Lastly, in order to take full advantage of the benefits of a living trust, it is vitally important to make sure that the trust is properly funded. This ensures that all relevant assets are included in the trust. If not done properly, a situation can arise where one's heirs may have to probate an estate even though there is a living trust, which completely circumvents one of the main advantages of having a living trust.

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