

## **LIVING TRUST VS. SIMPLE WILL: PAY A LITTLE NOW OR A LOT LATER**

by Shawn Christopher, Esq.

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 and dilemmas.

The unexpected consequences arise when heirs have to deal with probate, which is the process whereby a will is submitted to a court for administration after the death of the person who created a will. The executor of the will, usually the person named in the will to handle the affairs of the estate, is responsible for overseeing the administration of the estate until the conclusion of the probate process. Typically, probate costs can range from 4% to 10% of the value of an estate. Further, it usually takes a number of months to conclude the probate process through the court system.

Like a will, a living trust can also be used as the means to wrap up one's affairs after their death. A living trust differs from a will in that the trust does not have to be submitted to probate. The trustee of the trust, usually the person or company named in the trust to handle the affairs of the estate, is responsible for managing the estate until the trust terminates pursuant to the terms of the trust. The terms of the trust may be flexible and can provide for the trust to terminate shortly after death or at some distant time a number of years later. Administration of the trust is usually much less expensive than probate, thereby resulting in significant savings to the estate.

The determination of whether to choose a living trust or will depends on a number of factors. In general, 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 entanglements of the probate process are minimal. In such a scenario, a will is submitted for a quick approval by the court by the filing of an Affidavit of Entitlement. 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 depending upon the gross value of the estate, types of assets owned, and the relationship of the heirs under the will. In most of these situations, it is usually advantageous to have a living trust. While it is usually less expensive to create a will than it is to create a trust, for those who own real estate or have a modestly valued estate, this minimal savings is more than offset by the expense and burden of probate.

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, all because certain items were not properly placed in the trust estate.

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