

Should I Do A Will or Living Trust?

By: Douglas G. Goldberg

Which is better, a refrigerator or a gun safe? If you answered the question with a definite choice, chances are you already had something in mind – either keeping your beer and ham sandwich cold or protecting your firearms. For most people, however, the answer includes a blank stare, a raised eyebrow, or the comment, “it depends.” Interestingly, both responses are correct.

The thought process to answer the question is really a matter of determining your goals. While the refrigerator and the gun safe are both wonderful pieces of equipment, the choice of one versus the other really depends on what you want to accomplish. Then when you decide on the right tool, you still have to decide which type of tool you need. Color, size, style, cost, location, equipment (automatic ice maker, combination or keyed lock, etc.), and a myriad of other important decisions must be made to make sure you choose the right tool, and then get instructions to be able to use it properly. The bottom line is that the refrigerator is not the right tool for every job and neither is the gun safe. If your ultimate goal is to keep your beer and sandwich cold, even the finest, top-of-the-line gun safe with all the bells and whistles won't help.

Estate planning is like that. Everyone's planning goals are different and every goal requires very specific documents and strategies. Even when the goal is the same, for instance, avoiding probate, different strategies based on life experiences and long term family goals are appropriate. Some documents can achieve several objectives at the same time while others are designed for a definite purpose and can only accomplish one thing.

The second most frequently asked question in my practice (behind, “how much



will this cost?”), is “which is better, a will or a living trust?” The answer is, of course, “it depends.” Here's some basics to help you make the decision easier.

A Will does three things:

1. It directs how and to whom your assets will be distributed after you die.
2. It names who you want to act as guardian for a minor child or a disabled adult child.
3. It names a personal representative (“executor”) to handle your affairs after your death.

A Living Trust does three things:


1. It directs how your disability is determined and who will handle your affairs if you become disabled.
2. It directs how and to whom your assets will be distributed after you die.
3. It names a successor trustee to handle your affairs after your death.

Neither document resolves all your affairs. When you die, certain matters have to be taken care of by somebody, whether you have a Will, a Living Trust, both, or neither one. Funerals, burial, cremation, headstones, obituaries, bills, personal business, and insurance matters must be taken care of. Tax returns must

be filed. All of your property must be accounted for, secured, divided, and transferred as required by your planning documents. None of these chores can be avoided. A certain amount of time, effort, and expense is involved. Obviously, leaving all these details to an attorney can be expensive, but it is usually not necessary if your Personal

Representative and heirs can help. What time period are you planning for? If you are planning for what happens when you die, either a Will or a Living Trust will do. If incapacity is your concern, a Living Trust is generally a superior choice. Since assets in your Living Trust are already under the control of a Trustee that you named to take care of things upon your incapacity, your property can be managed quickly and smoothly for your benefit. A Living Trust can avoid months in a legal disability proceeding and will also avoid ongoing court supervision over financial decisions.

A living trust is the superior tool if you own a vacation home or other real estate in a state other than the one in which you live. A trust allows for immediate distribution of the property after death and avoids the probating of your will in each state in which you own property.

Just like the refrigerator or gun safe decision, a Will is not the right tool for every job and neither is a Living Trust. Talk with a qualified estate planning attorney to discuss your options and make the right decision for you and your family based on your planning goals. 

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