As a partner and lead estate planning lawyer for the law firm The Nordhaus Firm, in McKinney, TX., I work with many families on estate planning helping them preserve and protect their estates. One of the key documents I use is Living Trusts. This is no longer a planning tool for the wealthy or retired. In fact I use this for estates that are valued at less than $500,000. Over the last 10 years, the use of Living Trusts has skyrocketed amongst McKinney, TX estate planning lawyers, in Texas and through out the United States.

The two most common types of living trusts most estate planning lawyers use, are: a basic living trust which avoids probate, and an AB trust (for couples), which both avoids probate and saves on possible federal estate tax issues. Under the present laws, federal estate taxes for 2010 are not a concern for anyone passing, no matter the size of the estate. Beyond 2010 there are rumors that the present amount of estate taxes imposed by the government will be revised to a lower amount than what was applied in 2009. For most families that have estates less than $1.0 Million dollars, a basic living trust and ancillary documents will be all that you probably need. Different kinds of trusts, both revocable and irrevocable, can help you avoid probate, reduce estate taxes, or set up long-term property management. For purposes of this article, I'll focus on the revocable trust and the accompanying will.

Revocable Living Trust:

In legal terms made easy, a trust is classified as a "living" trust when you establish it during your lifetime. A "revocable" living trust means you have the right to amend or revoke the trust during your lifetime. In the United States, a living trust refers to a trust that may be revocable by the trust creator or settlor (known by the IRS as the Grantor). So you are the settlor in a Revocable Living Trust, since the settler (you) wants to manage his or her own property.

With most living trusts, you're also known as the trustee or manager of your own trust property and keep full control over all the property in the trust. Should you become unable because of death or disability to continue managing the trust, your spouse or another named person that you've appointed will act in your place as the successor trustee. Once the trust is executed, you will need to change the title on certain assets to reflect the existence of your trust.

Titled Property (home, land,rental property, motor home, boat, airplane) and/or certain financial accounts (savings, CD's, Money Market, certain investment accounts,etc.) will be held in your trust, as an example, would be titled as "John Doe, trustee of the John and Jane Doe Revocable Living Trust dated July 12, 2006.

Pour-Over Will:

Anytime I prepare a trust I also prepare a will. I advise all my clients that they need to have a special will drafted and signed in conjunction with their living trust. This type of will, referred to as a "pour over" will, names the living trust as the principal beneficiary. So in simple terms, any property which you fail to transfer to the trust during your lifetime is added to the trust upon your passing and distributed to the beneficiary in accordance with the terms of the trust. Even though a living trust is considered the principal document in an estate plan, a pour-over will should accompany the trust. The whole purpose is to avoid probate proceedings on your estate.

Probate:

Probate is a court proceeding at your passing that determines final distribution of your assets should you die with or without a will. The costs vary and the time your loved ones might spend in court can be as little as 2-3 months or as long as 2 years. If you're unfortunate at death to have left any titled property or certain financial accounts in your name only, not titled in trust, these assets can possibly face the scrutiny of the probate court as part of your estate.

Setting up a properly funded living a pour-over will, and powers of attorney, does require an investment, but is far minimal compared to the time and money lost on probating an estate or facing possible court supervised guardianship if you become disabled and unable to make decisions. A properly funded living trust can eliminate the need for probate, probate fees, and your surviving family members can transfer your property quickly without waiting months for probate to be complete. If asked, most people want to leave as much of their money to their children, or other heirs, as possible — and want to avoid a big chunk of that money going to the state, courts, and probate lawyers.

Still, not everyone has to worry about probate, and some people don’t need a living trust at all, everything depends on the assets you have, how your property is held, or even if you have property. Sometimes a will and powers of attorney for health and asset management is all that you need and if you have only one beneficiary, or you name a charity to receive your estate, probate probably isn’t a big concern.

If you’d like more information on estate planning, Living Trusts, or have other estate planning questions, please contact my office and ask for April Nordhaus, Estate Planning Lawyer for the law firm The Nordhaus Firm. Our law firm is located at 5900 S. Lake Forest Drive, Suite 200 McKinney, TX 75070, or contact me directly at 972.632.1300.

April Nordhaus is a McKinney native with an understanding of-and deep care for-the community and its residents. She is recognized in the region for her compassion while providing expert counsel in estate and trust cases. She also handles probate, guardianship, and small business formations.

April was named by Goldline Research as one of The Most Dependable Lawyers (Trusts & Estates) of Texas as published in Forbes Magazine in August 2008. If you live in and around Collin County, you can count on April as being one of the most qualified estate planning lawyers in McKinney through out the Dallas metroplex.