

Years ago, most people assumed they needed to use a will to ensure that their property would be allocated properly after they passed away. Then suddenly many estate planning lawyers started insisting that living trusts were a better option.

As a result, clients now ask a McKinney will attorney if they should prepare a will or a living trust. Which is better?

The answer depends somewhat on the circumstances. But it is not usually an “either/or” proposition—a situation that will become more apparent with a greater understanding of what these documents do.

How a Living Trust Works

Although people often think that a trust is some type of account, it’s actually a type of legal entity. A person creates a trust, puts property into the trust, and designates a trustee to manage the property. While the trustee handles investment and other decisions, the trustee is just managing the property for another person, the beneficiary. For instance, a grandparent might create a trust for a grandchild beneficiary with special needs, and they might name the child’s uncle as a trustee.

With a living trust, the person creating the trust is also the trustee and the beneficiary. The trust technically owns the property but is still managed by the person who put the property into the trust, and the person who put the property into the trust still gets all the benefits from it.

So why would someone go to all that trouble? The answer is that although the creator of the trust might be the trustee and beneficiary initially, they can name a successor trustee and successor beneficiaries who get the property when the original beneficiary

passes away. This transfer occurs automatically, so the property does not go through the expenses and delays of probate.

A Trust Works Best in Combination with a Simple Will

For a McKinney will attorney, asking whether it's better to have a will or a living trust is a bit like asking whether it's better to take swimming lessons or wear a life jacket. Ideally, you want both. A living trust smoothly transfers ownership of all property that has been legally transferred into the trust. But very often, something gets left out. When the creator of the trust also has a will that passes all remaining property into the trust, that usually ties up the loose ends. A will can serve to reinforce the credibility of trust documents, particularly if the successor trustee is the same person named as the executor of the will.

Not everyone may want to set up a trust. For individuals with small amounts of property or property that is already jointly titled with children who would be the beneficiaries of a trust, a trust may not be necessary. A will, on the other hand, is always a good tool to have. Wills can do certain things that a trust cannot, such as establish a guardian for minor children. But on its own, a will is not enough to keep property from going through probate.

Talk to a McKinney Will Attorney to Find the Right Documents for Your Situation

The best way to find out which documents combine to create the most effective plan for your situation is to talk with an experienced McKinney will attorney. The

Is it Better to Have a Will or a Living Trust?

knowledgeable estate planning team at The Nordhaus Firm could review the potential advantages and drawbacks and devise the right documents to accomplish your goals. Contact us today for a confidential consultation to learn more.