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Gaining more knowledge about trusts

One of the confusing aspects of estate planning for many is whether a Will or a Trust is more appropriate. In order to make a decision about what is correct for any particular individual, one must have a better understanding about trusts in general.

Trusts come in many forms. Readers may be familiar with trusts for minors, trusts for disabled persons, bank assets which are held "in trust for," irrevocable trusts, and Living Trusts. For purposes of this article, I will focus on a Living Trust or a Revocable Trust, which is a substitute for a Will.

A Will disposes of assets after death. Some people feel that a Will is not necessary, since their assets are minimal. However, it is still important to express your wishes for the disposition of your assets while you are living, so that what you own goes to the right persons, in the right way, and at the right time. It is far better to have assets be placed in a special needs trust for someone who is receiving public benefits at your death, than to have that person lose important resources. Young people who inherit assets can either not be able to receive them due to their ages, or may receive sums of money which they are not prepared to handle. Husbands and wives need to provide for the survivor, since intestate law in Pennsylvania (for those who die without a Will) does not provide for the entire estate to pass to the surviving spouse if there are children. These are just some of the reasons that a written testamentary plan is so important.

A Living Trust or Revocable Trust is another way to dispose of assets after death; it can be a substitute for a Will. There are States in which a Living Trust is very helpful, California and Florida being among them. This is because in some States in our country, probate is expensive, cumbersome and time consuming. However, in Pennsylvania, the probate process is easy, takes little time, and is relatively inexpensive. Probate is the process of filing the Will in the County's Register of Will office. It is the first step in the process of administering the estate, and is not an onerous duty, and not the violation of privacy as many claim.

On the other hand, a Living Trust does not require the probate process *if* Trust was properly maintained. However, if all of the decedent's assets were not re-titled in the name of the Trust, probate is still necessary for what is known as a "pour over" Will. Moreover, a Living Trust does not protect the estate from inheritance tax, or the need to file an inheritance tax return. Living Trusts are much more difficult to maintain (all new and existing assets must be titled in the name of the Trust for it to be effective), and more costly to initially set up. Furthermore, a house titled in the name of the Trust can result in loss of protection for that asset in a Medicaid situation for the spouse who stays home.

There are situations for which a Living Trust is appropriate. However, most people have heard about this product from someone in another State, or have been approached by a financial advisor who sells these products. It is very important that if you are considering a Living Trust, that you speak with a knowledgeable attorney to see if this product is right for you.