

We Already Have a Trust – Are You Sure?

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Recently, several people have asked me to review their older estate plan. Usually, they say something like, “I need you to review my trust to make sure it’s still good.” When I review their plan, I find they don’t even have a trust. They *THINK* they have a trust, but they do not. It is remarkable to me how many people out there are walking around with simple wills, all the while believing they have a living trust. Therefore, I thought I would explain a bit more about “wills.”

First, while a simple will is a good idea, it amounts to nothing more than a “wish list” of where you want things to go AFTER you have died. That’s pretty much it. With a will, the courts are still generally involved with the transfer of your assets. Also, if you only have a will, probate proceedings will likely be necessary. Assets will be distributed according to your will (assuming no contests and your will is valid). This process is generally known as “probate” and can take around 12 months or more to accomplish. In the meantime, the family may have difficulty accessing the assets and often find themselves reaching into their own pockets to meet estate expenses.

Administering a will can be a very costly affair to your family. Imagine the need to sell off assets so your family can pay the court and attorney fees! Also, if all you have is a will that goes through the court process, your family loses all privacy as probates are public proceedings. In case of incapacity or disability, your will is of no use since it only goes into effect when you die. You need to make sure you have other legal documents in place in the event of incapacity or else you may find yourself involved in what’s called a “Conservatorship” which is basically a process where someone is named your guardian. In some cases, they also manage your money. Conservatorships are expensive and in some cases, embarrassing as you are deemed “incompetent” to handle your affairs by the court.

Even if *you* have your affairs in order, and you have a living trust in place, ask your parents if they have taken a close look at their documents. Do you really want to inherit their headaches? There are many people out there who think they have a living trust when in truth, all they have is a basic will. Don’t get me wrong...having a will is better than nothing, but it would be a shame if your goals aren’t accomplished because you or someone you know didn’t take 5 minutes to take a close look at their documents.

Some clients ask me if a will is enough. I explain that for some smaller estates (usually less than \$100,000), a simple will could be enough. In some cases, depending on how you hold title to your assets, a will is of no consequence whatsoever. The California State Bar offers a free entry-level will that may be appropriate for some people. You can check it out at www.calbar.org or call me for further information.