

WILLS AND LIVING TRUSTS

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WILLS AND LIVING TRUSTS

I. WILLS

● SOME OF THE ADVANTAGES OF ESTATE PLANNING WITH WILLS

Wills have been in use for many hundreds of years and they obviously have advantages that are self evident. Some, but not all, of the advantages of Wills are as follows:

1. **INDEPENDENT EXECUTOR.** The testator may pick an Independent Executor to serve without bond. In many instances this streamlines the probate process.
2. **TAX PLANNING.** There may be significant estate taxes savings through the use of bypass trust in a Will the same way as in a Living Trust. Marital deduction planning may also be done.
3. **GUARDIANSHIP PLANNING FOR MINOR CHILDREN.** The testator may plan for Guardianship avoidance for minor children or disabled children.
4. **CONTROL OF PROPERTY THROUGH TRUSTS.** Testator can control the ultimate disposition of property.

● SOME OF THE DISADVANTAGES OF WILLS

1. REQUIRES PROBATE

* There may be delays in property transfer.

* It may be expensive.

* Husband and wife's estates must go through TWO probates.

* **NO PRIVACY** - Probate is a public proceeding. The records of who gets what and what the estate owned are open to the public.

Probate comes at a time of great stress -- the death of someone close.

2. Wills are technical and often difficult to understand.

3. **NO DISABILITY PROTECTION** -- by themselves -- you may have related documents, i.e., Durable power of Attorney, but these documents may not be accepted by all institutions.

4. WILL CONTESTS - Heirs fighting over estate at great expense to the estate.
5. Property located in other states -- may require more than one probate.

II. LIVING TRUSTS

● ADVANTAGES OF LIVING TRUSTS

1. PRIVACY - The assets of a living trust do not go through probate and thus do not become public record. The expense of probate is also eliminated.
2. PROPERTY IN OTHER STATES - Since property is owned by the by the Living Trust, and does not go through probate, there is no need to have ancillary probate in other states as you would have to if you had a will.
3. STRONG DISABILITY PROTECTION - If one of the owners of the assets becomes disabled, then the other trustee, or a successor trustee, manage the assets.
4. PEACE OF MIND - No probate at a very stressful time. No immediate Inventory of Estate.
5. Less likely to have heirs fighting:
 - * "Standing" issues
 - * Evidence issues - this was the owner's plan -- he or she put it into effect during their life.
6. Can reduce or eliminate estate taxes in the same way that traditional estate planning can.
7. The owners of the property stay in control during their lifetime.
8. Is revocable -- you may change it or eliminate it during your lifetime.
9. Can provide for outside management.

- **SOME OF THE DISADVANTAGES OF LIVING TRUSTS:**

1. You may not be able to put all of your property in a Living Trust (or you may forget to put some of your property in a Living Trust), hence some of it may have to go through probate. Some examples of property that may not be able to be placed on a living trust include professional corporation and professional association stock, which may only be owned by the licensed professional who has incorporated.
2. Placing all of your property in trust and then remembering to title all of the assets that you acquire for the rest of your life into the living trust may be considered a nuisance. For this reason, younger individuals sometimes are less likely candidates for a living trust. However, you have to put all of the assets you acquire into some name any way, so proponents would say that this is not a valid disadvantage.
3. There may be other disadvantages to a living trust, some of them minor, as there is to Will planning. No estate planning method is perfect. We are only hoping to find the best method for the particular purpose.

INTESTACY

1. Intestacy is dying without a Will. It is estate planning by default. It is often expensive and time consuming.
2. In Texas, if a married person with children dies without a Will, the deceased spouse's community property may pass to the children when there has been a prior marriage, not to the surviving spouse. This may not be the outcome that either the deceased spouse or the surviving spouse intended. There will be no marital deduction for property passing to the children and thus no deferral of estate tax on that property.
3. If a married person with no children dies without a Will, all of the community property and the separate personal property of the deceased spouse passes to the surviving spouse. However, only one-half of the separate real estate passes to the surviving spouse, with the other half being divided between the parents, if both parents are living, if not then some or all to the brothers and sisters of the deceased spouse.
4. Intestacy is often the most expensive process. If you have a Will you can name an Independent Executor to serve without bond who may serve somewhat independent of the probate courts. In a Living Trust you may be able to avoid probate, but in intestacy you are not usually independent of the courts.