

## **What is the Difference Between a Will, Living Trust, Living Will and Power of Attorney?**

**Will:** A Will is the legal document that allows you to distribute your property to people that you choose. A Will allows you to designate beneficiaries to receive specific items from your estate. For example, if you want your house, your car, or your antique firearm collection to go to a certain person or organization, you designate that person or organization as the beneficiary.

A Will can also provide for parents of minor children to nominate a guardian. The court makes the final decision when appointing a guardian for your children after your death, but the court will usually accept your nomination. A guardian's legal responsibility is to provide for your child's physical welfare.

Remember, bank accounts, retirement accounts and insurance policies have "beneficiary" designations and usually pass separate and apart from a will.

**Living Trust:** Should you desire "strings" to your property, then a Living Trust may be what you want. Unlike a Will, a Living Trust can start benefiting you while you are still alive. A living trust is a trust established during your lifetime. If you make it revocable, you can make changes at anytime. You will transfer substantially all of your property into your living trust during your lifetime, and any omitted assets can be transferred into the trust at the time of death through the use of a simple Pour-over Will.

A living trust will be used as the mechanism to manage your property before and after your death, as well as provide how those assets, and the income earned by the trust, are distributed after your death. If you should become incapacitated or disabled, the trust is in place to manage your financial affairs, usually by a successor trustee, if you were serving as trustee. A living trust is not subject to probate, and therefore, all provisions of the trust will remain private.

**Living Will:** A Living Will is a document that addresses only death-bed considerations such as his/her desire that life-prolonging measures be discontinued when there is no hope of ultimate recovery. A living will is very important to avoid situations in which life-prolonging measures keep a person alive with little or no quality of life. Basically, a living will prevents situations like the Schiavo incident from becoming a court matter.

**Health Care Surrogate:** A health care surrogate is a person appointed by a competent adult to make all of his/her health care decisions during any period of incapacity. The health care surrogate has the duty, when acting on behalf of the maker, to consult with

health care providers and make the health care decisions that the individual would have made for her/himself, not those which the surrogate would have chosen. The designation of a health care surrogate may be revoked by its maker at any time.

The health care surrogate designation is recommended to accompany a Living Will and is an important part of a complete estate planning portfolio.

**Power of Attorney:** A Power of Attorney is a written document by which a person legally delegates to someone else a part or all of his/her authority to make legal decisions on matters on a short or long-term basis. A Durable Power of Attorney is the more comprehensive document and survives incapacitation of the maker. A power of attorney gives the person the authority to step into the shoes of the maker and carry out legal duties that the maker would be entitled to do, such as signing checks, buying and selling property and the management of other personal affairs.

The above is a brief description of estate documents that every person should consider. Failure to have a comprehensive estate portfolio can be a big problem should someone suffer a serious event that incapacitates them.

Should you have any questions concerning your estate portfolio, please do not hesitate to contact me.

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