



Elder Law Advisor

A Will or a Living Trust: What's the Difference?

We do a lot of educational presentations, and the most common question from the audience is “what is the difference between a will and a living trust?”

A will is a document you can sign that specifies who will receive your assets after you pass away. It allows you to appoint a personal representative to gather your assets, pay your bills, and distribute the remaining assets to your beneficiaries. Wills are fairly inexpensive. However, they do have one major disadvantage: when your estate passes according to the terms of a will, it usually has to go through probate.

Probate is a court-supervised distribution of your estate. It normally takes 6 to 12 months, and the cost of probate is usually around 2% to 3% of the value of your assets. Many people want their loved ones to avoid the hassle and expense of probate. For them, the answer is a living trust.

A living trust is like a will, but it avoids the cost and delay of probate. Instead of naming a personal representative, you name a successor trustee, who is authorized to pay your bills and distribute assets to your beneficiaries without probate court involvement. A living trust is more expensive to set up than a will. However, the living trust saves time and money in the long run, since it is much easier for your beneficiaries to administer after you are gone.

Since the main purpose of a living trust is to avoid probate, I don't normally recommend them for younger people. In most cases, I tell people to start thinking about a living trust at age 60, and by age 70, it is a good idea to have a living trust set up. If assets are modest, I often recommend that people do a simple will, to keep the current cost as low as possible with the understanding that there will be additional cost and delay for the beneficiaries. But if the cost of setting up a living trust will not change the way you are living your life, it makes a lot of sense

to go with the trust.

I strongly recommend against using will or trust documents obtained from a legal stationery store or over the internet. It's too easy to make mistakes this way, mistakes that can invalidate your estate plan and leave your heirs with an expensive mess. In the worst cases, fighting over an estate splits families and causes irreparable damage.

Finally, no matter how modest your estate is, remember that a well-planned estate is a gift to your beneficiaries. Setting up your estate so it is administered with minimal delay and expense allows your loved ones to focus on grieving your loss, and to carry on with the continuing challenges of life. Your beneficiaries will appreciate this final act of caring.

Geoff Bernhardt is an elder law attorney in Portland, Oregon. For more information on his firm and on estate planning issues, please visit his website at www.elderlawpdx.com.

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**Geoff Bernhardt & Julie Lohuis
Attorneys at Law**

Please make note of our new address:

Law Offices of Geoff Bernhardt
5603 SW Hood Avenue
Portland, OR 97239
phone: 503-548-4000
fax: 503-548-4003

e-mail: geoff@elderlawpdx.com
www.elderlawpdx.com
www.elderlawpdx.blogspot.com