

Living Trust... Living Will... What's the Difference?

Article by: Phil Craig

"My mom told me she has a living will. That way she's going to avoid probate"

I can't tell you how many times I've heard this when a new person finds out I was a living trust lawyer.

They go on to say, "She got one of those forms at the seniors' center. You know, the one she can fill out herself. They even witnessed it for her."

I hate it when this comes up, because I have to set the record straight, I have to let the person know that a "living will" and a "living trust" are two different instruments that serve two different purposes.

One, the "living will," is your statement that "If I am terminally ill or mortally injured (I'm using simple language here to get the point across), then don't hook me up to life support that will never return me to life." It's the issue that's currently being fought in Florida, with Governor Bush signing a law to keep a woman alive over her family's wishes and a court ruling.

Her "living will" has nothing to do with avoiding probate. It is a health care document. Really it should be called a "death desire," but our society can't handle that bluntness.

A "living trust," on the other hand, IS a probate avoiding document.

Basically, probate is used to transfer property you own when you die. If you have a will, your executor uses the probate court to carry out the terms of your will. If you die without a will, the laws of your state has statutes that describe where your property goes and who is in charge of getting it there.

So, if you don't own any property when you die, then (generally...there are always exceptions) there is no need for probate.

This is where the living trust steps in. It called a "living" trust because it is created while you are living.

When you create a trust, you transfer title to your property to the trustee of the trust. You, as an individual, no longer own the property.

So, if you die, no probate is needed (remember, there are always exceptions), since YOU don't own the property. The property is owned by the trustee of the trust. The trust instrument instructs him/her on what to do with the property upon your death.

A "living trust" is a LOT more complicated to set up and maintain than a "living will." They accomplish different tasks.

So, when you hear that a loved one has a "living will to avoid probate," it might be smart to ask a few questions.

Good luck and until next time,

Phil Craig

P.S. Feel free to forward this on to any friends.

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Phil Craig is a licensed attorney and entrepreneur. He started practicing law at age 25 in 1979. He does not take on any more clients, but is advisor to some of the biggest names in the internet world. He shares his knowledge gained over the last 25 years at his Living Trust Secrets newsletter site: click here=====><http://www.LivingTrustSecrets.com>

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