

Similar Estate Planning Terms are Confusing

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on April 21, 2010.

Most people understand what you are talking about when they hear the word "will" or the words "last will and testament." These terms identify a document expressing how you wish your property to be distributed upon your death.

Mix in a few other terms such as "living will," "living trust" or "ethical will," and serious confusion begins to set in. Often people will use the term "living will" and "last will and testament" interchangeably, when they are two very dissimilar estate planning tools.

"Last will and testament", "living will", "living trust" and "ethical will" are names for four different estate planning documents that control four different matters.

The first and most commonly known is the Last Will and Testament. Beyond just naming beneficiaries, this document provides for executors and alternates, and also may provide for guardians of minors, tax planning, testamentary trusts and trustees. Every adult who owns property should have this instrument.

A last will and testament is not to be confused with a "living will." This document also is known as a directive to physicians or physician's directive. Some lay persons refer to it as a "die with dignity" or "pull the plug" document. This planning tool is an instrument that says if you are unable to make decisions for yourself and become terminally ill, and death is eminent (meaning the person is expected to die within six months or less), or if you have been diagnosed as having an irreversible injury or an incurable disease, and the only thing that life supporting systems can do for you is to artificially postpone the moment of death, then discontinue life support systems. Many people want to continue pain medication and some want to continue with nutrition and hydration, not wanting to be starved or dehydrated to death when they are expected to die anyway. You also can choose to have the document instruct your loved ones that all life support efforts be used to help keep you in this terminal situation. All adults should have a living will making it clear how they want to be treated in end of life situations.

A Living Trust is a document that is sometimes used to place a person's assets into while still living. These trusts typically are also referred to as revocable living trusts (RLTs) which can be used to manage assets during the life of the person and operate to pass assets after death. They are also used as a tool to manage assets during incapacity and to avoid probate. This is not a legal document that is necessary for everyone. Although they are frequently used to avoid probate, the client may find that the legal work associated with the trust costs as much or more than probate.

Finally, the ethical will is a document that some people utilize in order to leave information to their family as to their values, who they were as a person and often historical information that would otherwise be lost. This is a more formal way of leaving family history behind as opposed to information sometimes left in family Bibles. Obviously, this document does not carry the same legal importance as the other instruments. You will need to decide how important it would be to you to preserve this

information. There are many inexpensive forms available on the Internet if you wish to create this document on your own. Some elder law and estate planning attorneys help to prepare this Ethical Will for their clients.

Regardless of which documents you may want or need it is important to consider obtaining them before you become incapacitated because then you would no longer have the ability to execute them.