

Quick Primer: Wills vs. Living Trusts

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Think that a Will sitting in the drawer means your affairs are in order? Think again.

The only time a Will has any legal effect is when it is taken to Court. A Will is essentially a letter to a Probate Court Judge. The Will's Personal Representative (also known as the Executor or Fiduciary) has no power to settle the estate until the Judge has accepted the Will in the Court probate process. Further, none of the words in a Will can be given any legal effect, until a Judge issues a Court Order.

A Will may not control all of a person's property even if the Will says it does. It all depends on how the property is titled or designated. The expression "possession is nine tenths of the law," is never more true than with the use of a Will-possession being the legal title or other designation of the property.

Generally a Will only controls two types of property - the property that is titled solely in the name of the deceased person - and property that is made payable to the deceased person's estate.

Property that is joint with rights of survivorship or payable upon death to other than the deceased person's estate are two common forms of ownership that are generally *not* controlled by a Will, even if the Will refers to that property by name.

A properly drawn Will can disinherit absolutely anyone except the deceased's spouse - unless there is a well-drawn prenuptial contract that specifically allows for the disinheritance of the surviving spouse. Without a prenuptial contract, if a Will says the surviving spouse will inherit nothing, the spouse *can still claim* a share of the estate.

Passing property by a Will is rarely the least expensive way to do it, and is the most public and time-consuming way to pass property to loved ones.

At death, a Living Trust, also known as a Revocable Trust, works exactly as a Will does, except the estate settlement process is private, quicker, and usually cheaper than by a Will. Similar to a Will, a Living Trust can be changed whenever the writer's mood strikes.

When a Living Trust is used no Court action is required to settle the estate. The Trustee or Successor Trustee administers the settlement. The Trust only controls property that is titled in the name of the Trust or made payable to it.

Three common forms of property ownership are not controlled by the language of a Living Trust even if the Trust refers to that property by name. These forms are: property titled in the deceased's name alone; property which is jointly held with rights of survivorship with another person(s); or property made Payable upon Death (or Transferrable upon Death) to someone other than a Living Trust.