

*This is a narrative version of the Demo presented to the McHenry County Computer Club on October 13, 2007 by Joe Marto.*

When we talk about Wills and Trusts, we are talking about Estate Planning: Who gets what when you die, and how they get it. Who sees to it all?

To talk about who gets what, we have to talk about Titles to Property.

What is a title? What is ownership?

A title or ownership is a bundle of rights – described as a bundle of sticks. You have certain rights over property. When you have the whole bundle, you have complete or total ownership. You can sell, mortgage, lease, destroy, give away property.

For example you give a deed to real property or a bill of sale for personal property. You sign over or transfer a title to a motor vehicle.

So this is how title is passed when you are alive. When you are gone, how is Title passed? Who gets the bundle of rights which you held in property?

That depends on how title is held!

Title is held either solely or jointly.  
Let's use your house as an example;

It can be held in your name alone, with your wife in Joint Tenancy, with your wife and others (kids).

It can be held either directly or in trust – a land trust or a living trust.

So what happens to the property in various cases:

- 1) You die with house in your name alone and you have no will or trust. You have died intestate.

Who decides who gets it? Law: Probate Act.  
The State.

And who does get it? See probate act: Spouse, kids, relatives.

- 2) Most common: house in name of H&W.  
Whoever survives gets it.
  
- 3) Another common thing: H&W & Kids. Why do that? Avoid probate. H&W die and kids get house. No fuss, no muss, no lawyers!

That can be a real problem: anyone on the title to that house owns it all! If they run into catastrophic problems, you can lose the house.

Personal property, everything other than real property, is held in the same way! With a couple of exceptions which we will look at later.

So, how do you pass title to property after you die?  
A will or a living trust. (or a few other ways – later)

What is the difference between a Will & a living Trust? **PROBATE!**

Probate is much maligned and wrongfully. It is not expensive, it is fairly simple.

The court oversees the work of the executor and makes sure that exactly what the testator requires in the will is done as it is written!

The will has to be filed within 30 days of the date of death. If an estate is to be opened, it would be done as soon as possible. The inventory is filed within 60 days. The executor publishes the death notice (starts claim period of 6 months running). Executor then gathers assets, sells, any necessary to pay claims, etc. At end of 6 month period, executor has paid all claims, collected all money and assets. May now distribute to legatees. Then presents final account to Court and estate is closed.

With a Living Trust, you Create the trust with a Trust Document in which you name the Trustee, give him his powers, and tell him what to do. Normally you are the trustee, your spouse is successor, and child or children are successor trustees. The Trust says when who acts as Trustee.

Someone who has a trust may also own items that are not titled in the name of the trust. These are covered by a “pour over will”.

Living Trusts do not reduce taxes, estate or income. They are more expensive than a will which

can cost from \$100 to \$600. A trust usually costs \$750 to \$5000 or more. It may or may not reduce legal fees for the heirs: depends on who contests what!

One has to remember that anyone with a couple of hundred dollars can file a lawsuit and challenge anything from a will provision to a power of attorney at any time.

One of the main concerns in creating a trust or writing a will is who the executor (personal representative) of trustee will be. One normally chooses their spouse or a child or other close relative. The problem is, are they reliable. Even with court supervision of a Probated will there can be problems. With a Living Trust they are magnified immensely!

One alternative is to use a professional trustee – a Bank, Title or Trust Company. One also could use a Church.

Certain provisions are in all Wills & Trusts. Normally a person leaves everything to his/her spouse and their children. Separate clauses are used for personal and real property. Individual gifts of property are also made.

Items like Life Insurance should always have a beneficiary and not be left to an estate or owned by a Trust. That makes it taxable in an estate!

Items like bank accounts, CDs, IRAs, 401ks, Savings bonds, can have a co-tenant, or a POD or beneficiary.

Some states allow attaching a list to a Will giving various items to various people and incorporating the list by reference. In Illinois you must list it in the will.

Technically Funeral Instructions should not go in a will. The will does not become effective until letters of office are issued: a month after the death! However, it is a good idea to put them in to show the testator's wishes.

A husband and wife should have a simultaneous death clause:

If my spouse and I shall die under such circumstances that the order of our deaths cannot be readily ascertained, my spouse shall be deemed to have predeceased me. No

person, other than my spouse, shall be deemed to have survived me if such person dies within 30 days after my death.

Everyone should also have a Power of Attorney for Health which gives authority to someone to handle your health affairs if you are incapacitated. A Power of Attorney for Property (license to steal?) gives authority to take care of property matters. The Living Will directs removal of life support in certain circumstances.

The Land Trust has title to Real Estate owned by a Bank or Trust Company with power of direction in the Trustor. It can be amended at any time, supposedly offers secrecy as to title. Drawback is the cost of initial setup, usually around \$250, cost of a Deed in Trust, about \$100 and the annual fee, around \$125. They charge you for everything they do!

A small estate affidavit can pass title to any property worth \$100,000 or less.

Questions a problems gladly answered if possible free of charge to club members! Joe Marto 815 363 0640. [jpmarto@sbcglobal.net](mailto:jpmarto@sbcglobal.net).

