

Western Mass Estate Planning

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WILL

During lifetime:

- Generally less costly to create
- Continued control over assets during life
- Simpler estate planning tool – can retain assets in individual name – no need to re-title
- Report all income on personal income tax returns

After death:

- Probate Court proceedings necessary to access, manage, and distribute any assets not passing directly to any joint owner or designated beneficiary – formal proceedings if real estate
- Minimum of one year before distributions made to heirs/beneficiaries of Will
- Potentially more costly to administer after death because of Court/attorney fees
- More exposure to creditors because of duty to notify and publish in newspaper
- Easier for heirs to contest because opportunity given to file objection which delays proceedings
- Probate proceedings and probate file are open to the public
- May require Court authority to sell real estate within one year of death

LIVING TRUST

(Revocable)

During lifetime:

- Generally more costly to create
- Continued control over assets during life
- More complex estate planning tool – assets need to be re-titled into name of trust or name trust as beneficiary to avoid probate proceedings at death
- Report all income on personal income tax returns
- Still need “pourover” Will for any missed assets

After death:

- Intended to avoid Probate Court, although may still need probate for assets not directed to trust (title or beneficiary) OR received after death
- Avoids probate proceedings in any other state(s) where real property owned
- Can reduce or eliminate estate taxes for married couples with assets exceeding \$1 million
- Reduced waiting period before distributions to heirs/beneficiaries
- Usually less costly to administer after death (no probate fees/minimal or no attorney fees)
- Less exposure to creditors after death
- More difficult for heirs to contest, because of need to initiate lawsuit against trust
- Trust is private document; not made a public record with Probate Court
- No Court authority needed to transfer real estate
- Avoids MassHealth claim for reimbursement, as long as decedent received benefits at home (title to real estate must be returned to individual name if long-term nursing home care necessary)