

Wills, Trusts and Powers of Attorney: An Overview

This article is to provide you with a brief summary regarding the use and/or need for wills, living trusts, living wills, property powers of attorney and healthcare powers of attorney.

Why does one need a will and what purpose does it serve? A will provides direction to your executor and the probate court as to how to dispose of your assets and provide for your minor or disabled adult children upon your death. If you do not have a will, all of your assets will be transferred to your heirs pursuant to statute. Illinois has a statutory testamentary scheme for individuals who die intestate, or without a will. Also, if you have minor children, you may provide for their physical and emotional care in your will, instead of granting this power to the probate court pursuant to state law. Please keep in mind that a will does not avoid probate but only gives instruction to your executor and the probate court as to how you want the court to dispose of your assets and provide for your minor or disabled adult children. Also, certain assets may not pass through your will, so it is very important that you review and give consideration to how assets are titled or owned and to the beneficiaries on your accounts and insurance policies. For example, real estate owned in joint tenancy or tenancy by the entireties does not pass through your will but goes directly to the survivor, or a 401(k) plan with a beneficiary goes directly to the beneficiary.

A living will provides direction to your healthcare providers that you do not want death-delaying medical procedures used to artificially prolong your life. It also lets your family know your wishes, taking away any painful decision they might otherwise have to make during a very difficult time and resolving any possible conflict among family members over this issue. Your

physician must determine that your condition is incurable and irreversible, that death is imminent except for death-delaying procedures, and that you are unable to make your own healthcare decisions. He or she must then record such determination in your medical record before further action is taken.

Living trusts function very much like a will because they allow you to dispose of your assets and provide for minors and disabled adults after your death. A living trust is a

separate legal entity that holds title to the assets you choose to convey into it. As the trustee, you continue to control the assets and enjoy the use of and income from the assets as if you continued to own them outright. Also, you may revoke the living trust at any time during your lifetime and convey some or all of the assets in the trust out of the trust at any time before your death. The main advantage of a living trust is that upon your death it causes the immediate transfer

(continued on page 31)

BOB F. BRETT CHRISTINE JEREMY KARI BOB M. SHARON

SAME GREAT PEOPLE.
SAME GREAT SERVICE.
MORE EXCELLENT PRODUCTS THAN EVER.

WAUPACA SAND
AND SOLUTIONS

FINES FREE TOPDRESSING®
NORTH FACE BUNKER SAND®
7:2:1® BLEND

CART PATH GRANITE
BEST BUNKER SAND
CUSTOM MIXES

info@waupacasand.com
(715) 258-8566

Waupaca | Oconomowoc | Black River Falls | Antioch | Rockford | Morris

of ownership of your assets to your heirs pursuant to the testamentary scheme set forth in the trust agreement. This avoids the delay and expense of probate. Illinois law requires that a probate estate remain open for six months to allow for the filing of claims against the estate. Your heirs will not receive their share of your estate until this time passes and the probate process is completed. Also, probate requires an attorney, filing fees, publication fees and possibly a bond. Such expenses, especially legal fees if an heir contests the estate, can deplete the assets of the estate, reducing your heirs' share. Also, a probate estate is a matter of public record. Anyone can go to the clerk of court's office and review the court file, whereas a living trust is private and not subject to public disclosure.

There are disadvantages to living trusts. Living trusts are more expensive to set up and maintain than a will. Legal fees to draft a living trust are more than to draft a will and may be as much as the legal fees required in probating a smaller estate. Probate may not be a negative thing, depend-

ing on the size and nature of your estate and the location of your assets. Also, transferring your assets into the trust may be time-consuming and expensive. Real estate transferred into the trust requires a deed conveying the real estate into the trust and then recording the deed with the county recorder's office. Further, you may still need a will in the event you have assets that are not conveyed into the trust, such as a lottery winning, the shock of which causes your untimely demise.

Healthcare and property powers of attorney are similar in nature in that you designate an agent to make decisions for you and take care of your affairs if you are unable to do so. This situation may be permanent or temporary and the time period for this appointment may be for the rest of your life or for a shorter period of time, such as when you are going in for surgery from which you fully expect to recover but which may render you temporarily unable to make your own decisions regarding your health and or business affairs. The agent you appoint should be

someone you trust implicitly because of the full authority you are granting them. The agent appointed in the healthcare power of attorney may make decisions regarding elective and necessary medical procedures and sign any documents required by your medical providers on your behalf. The agent appointed in the property power of attorney, unless specifically limited to certain transactions, will have full authority to conduct all of your business affairs, including buying or selling assets.

Please note that estate tax planning issues have not been addressed. For estate tax advice, please contact an estate planning professional. Also, if you wish further explanation as to how any of the above might affect your unique situation, please contact an attorney who practices in this area of the law and is therefore knowledgeable on these issues.



24-Hour Emergency Service
Call 847-ILL-PUMP (847-455-7867)

◆ **WE RESPOND!** ◆
Sales • Service • Parts

James "Big Jim" Shanley

Phone: 847-439-9205 EXT 238
Fax: 847-439-9388
E-mail: jim@illinoisump.com

ILLINOIS PUMP, INC.
2525 S. Clearbrook Drive • Arlington Heights, Illinois 60005
Your reliable source for pumps, motors, equipment and professional service




RIVERWALLS LTD.
P.O. Box 562, Barrington, Illinois 60011

GOLF COURSE ENHANCEMENT
Shoreline Stabilization, Creek Crossings
Stream and Spillway Re-Construction

1-888-254-4155
OFFICE: 847-382-9696
FAX: 847-516-0116
MOBILE: 847-366-5400

DARRYL SCOTT BURKETT
C.E.O.

E-mail: riverwalls@aol.com



Gregory E. Martin
President

335 N. River Street
Suite 201
Batavia, Illinois 60510
Phone: 630.482.2532
Fax: 630.482.2536
Email: mdpltd@mdpltd.com
Website: www.mdpltd.com

MARTIN design
Golf Course Architecture
Landscape Architecture



360 Schaumburg Rd.
Streamwood, IL 60107

(630) 830-7405
FAX (630) 830-9652

CLAUSS BROTHERS, Inc.
GOLF COURSE
CONSTRUCTION AND RENOVATION
LARGE TREE MOVING