



# Estate Planning Lingo

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What's a will? What's a trust? Do I need both? Do I need either? What's a power of attorney? Are there different kinds of powers of attorney? What's a living will? What's the difference between a regular will and a living will? What is probate?

Clients ask me these questions every day. Sometimes they are embarrassed to admit that they don't know the answers.

In my opinion, a client should never be embarrassed for not knowing legal terminology. After all, we lawyers are famous for giving everyday things long and complicated names, and for talking in such a way that no one but another attorney can make any sense of what we're saying.

Here are some basic answers to the questions posed above.

A will is a document that states how a person's estate (that is, their property) will be distributed after the person's death. It also names an executor or personal representative, who is the person that will do the paperwork (usually with the assistance of an attorney) and legwork to make sure the estate is settled and the property goes to the intended people.

A trust does much the same thing, but can also play a role if the person who sets up the trust becomes unable to take care of his or her affairs, whether because of a physical or mental impairment. There are many different types of trusts. In most cases, a person who has a trust also has a will, and the two documents work together to produce the result the client wants. In many states, the most common reason to set up a trust is to avoid probate.

A power of attorney is a document that gives someone legal authority to take care of something for you. There are powers of attorney for financial matters and health care matters. These documents can be very narrow and allow the agent (the person you name in the document to act for you) to do only one specific thing, or they can be very broad and give the agent nearly unlimited powers. I call powers of attorney “powerful little documents” because they are fairly simple to draw up but can have huge and sometimes unintended effects on a person’s estate. When used properly, they can be one of the most important estate planning tools.

A living will is the document that tells health care providers that you do not wish to be kept alive if there is no reasonable chance that you will recover. Living wills were in the news quite a bit this past summer in connection with Terry Schiavo, the Florida woman who had been in a persistent vegetative state for many years. If you do not have a living will, family members will sometimes have conflicting opinions about your health care, which can lead to the legal battles we witnessed in Florida.

Probate is the process that a person’s estate goes through in order to pass the estate to the people who are to receive it. Probate works in part as a title-clearing function: the assets of the person who died are distributed to and titled in the names of the beneficiaries. Probate is a multi-step process and is administered by the courts.

In an upcoming column, I’ll discuss each of these estate planning tools/procedures in more detail.

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