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Wills and Revocable Living Trusts

A Last Will and Testament, known simply as a Will, is a formal legal document governed by strict statutory requirements. It directs how a deceased person's property and assets will be legally distributed to named individuals and entities. People often misunderstand how property is transferred after death. They believe that when they name their spouse, children or other beneficiaries in a Last Will and Testament, the named beneficiaries will automatically receive the assets after they die. This is incorrect. In order for the named beneficiaries to receive assets of the estate, the Will must be probated. Probate is the legal process by which the Surrogate's Court validates the Will and authorizes the nominated Executor to act on behalf of the estate. A probate proceeding is required to prove the validity of the Will, settle the affairs of the estate, resolve claims of creditors, adjudicate the interests of heirs and other parties and retitle the assets as the Will directs. For purposes of illustration, consider a home. Would you pay a stranger hundreds of thousands of dollars for a home that belonged to someone who had passed away without proof that the seller had the legal right to sell the house? Of course not. The document that establishes the authority to sell the property is called Letters Testamentary and is issued by the Surrogate's Court during the probate proceeding.

Before the Court accepts the Will for probate, the persons who would be entitled to a share of the estate if the decedent had died without a Will are entitled to notice and an opportunity to challenge the Will or the appointment of the Executor. This process can be time-consuming and costly.

Apart from the cost and delay associated with a probate proceeding, the public nature of the proceeding is often quite distressing. Everything in the Court's file, including the names and addresses of family members and beneficiaries, and a list of assets and their values is accessible to the general public and can be used to contact family members for solicitations regarding estate property and sometimes for other reasons.

Frequently, people inquire if there is a way to distribute assets after death without the need for a probate proceeding. Trusts have become a popular way of accomplishing this goal. One type of trust, the revocable living trust, achieves the same objectives as a Will, and also provides protection during your lifetime. Like a Will, it directs the distribution of your assets after death. Unlike a Will, it becomes effective immediately and continues to exist after your death. This is important for two reasons: first, there

is no need for probate, as your assets are owned by and distributed through your revocable living trust; secondly, it carries out your instructions should you become incapacitated.