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**ESTATES AND ELDER LAW REPORTER**

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**Wills and Trusts:  
Which is Right for Me?**

The Will and the Trust are the most commonly used methods to control property distribution after you have passed on. Both arrangements have many benefits and will most likely handle your estate with few or no problems. But, with the many similarities between Wills and Trusts, the question often arises... "which is right for me?" Some questions that may be included in this inquiry are: "Which method best avoids probate?" or "Which method allows for me to maintain the best control over my estate?"

Regardless of what you are looking to accomplish when developing a Will or formulating a Trust, it will help to know a little more about these options before making your final decision.

**A Will**, of course, specifies who gets what property after you die. You can also name a guardian for minor children in your Will. It is a formal, legal document that can be set up on your own, or by an attorney. Generally it is more cost effective to create the Will yourself, but unless you have made yourself aware of the many issues that can arise, some important things may be left out that could lead to disarray in the post-death distribution. The most important function of the will is to get your property where you want it to go after you die, instead of having the distribution of your property directed by state statute. Wills are also subject to probate.

**A Living Trust**, on the other hand, while very similar to a Will, can accomplish much more. So what makes the Living Trust different from a Will? First, the Living Trust is extremely flexible. With the Living Trust you can transfer all of your assets, or just some of them. The remaining assets may then be held in other Trusts created by your Trust for distribution at a later time or over time. This can be particularly important in situations involving minor children or grandchildren; or disabled spouses or family members.

Another advantage of the Living Trust is the fact that it is not made public at the time of your death. Wills do become public during the probate process, which in turn brings us to our next attribute of the living trust. If your estate includes a certain amount of assets (\$50 thousand in Illinois), probate will be required to assist in the post-death distribution, if in fact the Will was your choice method of property transfer. On the other hand, with a Trust, probate can be avoided. A Trust can also help you avoid or minimize estate taxes.

Of course, you can also transfer property by other probate avoidance devices. You can use such methods as joint tenancy, P.O.D. accounts and life insurance or annuities.

The Will and the Trust are both very effective when it comes to distributing property after death. With the Will's clear statements of wishes and the Trust's seemingly endless flexibility, you can be sure that one of the two will be appropriate for your estate. Deciding

between a Will or a Trust can still be puzzling. Hopefully, this information has cleared some of the questions you may have had about the Wills and Trusts.

The important thing to keep in mind is that you need some form of estate plan in place to assure that your property goes to whom you want, when you want it to go there. You should speak with an attorney who will gather information to guide you to what is most appropriate for your particular situation.

## **Medicare and Long Term Care**

Medicare pays a significant portion of medical expenses of the elderly and disabled. However, it is important to understand that, once someone develops a chronic medical condition, Medicare benefits are limited. This is especially true when the condition stops showing signs of improvement. This article touches on the different levels of long term health care and what benefits you can expect to receive from Medicare.

A patient who is "homebound" often requires help with transferring from bed to wheelchair and various other "custodial" services. Medicare usually doesn't cover these types of services. In order to qualify for home health benefits, the patient must be confined to the home, need nursing care on a regular basis, need physical or speech therapy, or if the person no longer needs nursing care or therapy, they may require occupational therapy. The only potential obstacle with the Medicare home health benefit is showing the continuing need for care, so as not to lose funding.

The Medicare Act states that home health coverage is available for up to 28 hours per week without special documentation. You could reasonably

receive up to 35 hours per week if additional medical justification is shown. It is important to enlist the help of your physician to make sure you will receive the appropriate home care benefits.

If a patient is admitted to a Skilled Nursing Facility (i.e.: a nursing home), Medicare coverage is available on a limited basis. Medicare will pay for up to 100 days under the following conditions: if you have had a three day hospital stay, you require daily nursing care, and you were admitted to the care facility within 30 days of your hospital stay. Once you have met these criteria, Medicare will then cover your stay completely for only the first 20 days. For days 21-100 you must meet a co-payment obligation and your condition must be improving to remain eligible.

Once Medicare benefits are exhausted, there are three ways to pay for long term health care: out of pocket; long term care insurance; or Medicaid.

If you have a family member with a chronic medical condition such as Alzheimer's, Parkinson's or stroke, you should talk to an Elder Law attorney before Medicare benefits end to make sure that you understand your rights and how to preserve assets for your loved ones under the Medicaid rules.

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