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Over the years, clients have asked me many questions about estate planning and probate. Here are some of those questions and answers:

Q – Do wills avoid probate?

A – No. The only way for a will to have any legal effect is for it to be probated. Probate is the process of proving a will to be valid.

Q – How is a living trust different than a will?

A – Sometimes trusts are created under wills, but those trusts are known as testamentary trusts because they are established at death. A living trust is different because it is created while the grantor is still alive. Rather than having assets pass at death by a will, the living trust is able to “own” assets while the grantor of the trust is still alive. The grantor is also able to choose a trustee (often himself or herself) to manage the trust assets, as well as beneficiaries to receive the assets someday. When living trusts are funded (i.e., assets are transferred into them), those assets pass automatically to the trust beneficiaries when the grantors die, and unlike transfers by will, avoid probate.

Q – What estate planning issues do I need to consider if I have young children?

A – The two biggest issues are who will take care of the children if you die and who will take care of the money. With a properly designed will or trust, an individual can designate a guardian to take care of the children and set up a trust for the children to efficiently manage the assets on behalf of the children. This keeps the children and assets out of expensive guardianship and conservatorship court proceedings and oversight, and allows parents rather than judges to make those important decisions.

Q – What is probate, and should it be avoided?

A – If an individual (i.e., a testator) dies with a will or without any estate plan in place (i.e., intestacy), a probate proceeding will be necessary to transfer titled assets out of the individual’s name to the beneficiaries set out in the will or determined by intestacy. The

probate process requires the executor of the will to notify and pay off creditors of the testator, and to file various documents with the probate court to transfer such assets. Depending on a person's age, net worth, and types of assets, using a funded living trust to avoid probate is something that should be considered.

Q – In addition to wills and trusts, what else do I need to set up to have a balanced estate plan?

A – It is a good idea to set up powers of attorney and health care directives to designate agents to assist with financial and health issues if such needs arise.