Wills and Trusts:

Below is some information about the process known as “estate planning.” Briefly, the legal term “estate” means the property of someone who has died; therefore while you are alive you do not technically have an “estate.” The planning process is to handle one’s legal and financial affairs and to arrange matters to one’s own liking before death. A legal document known as a Will is one such “estate planning” tool. There are other tools available as well, and you need to be an informed consumer in order to decide what tool is best for you personally.

“Estate planning” necessarily involves talking about death and dying in realistic future terms, as a given fact, and this is something that usually makes people uncomfortable – and in some cultures extremely uncomfortable to the point of avoiding the issue altogether. This is why people often procrastinate dealing with this issue. Different cultural backgrounds also affect people's views about the "estate planning" process and factor into their views about planning ahead in this area.

All of the different legal tools used in the “estate planning” process have pros and cons. The most common “estate planning” tools are Wills and Trusts. A Will is the most simple form of a legal document used to plan what will happen to your things when you die, however a Will is not a self-executing legal document and it generally has to be taken to Court in a process known as Probate before the assets can be distributed according to your wishes as expressed in the Will. The Probate process is time consuming, and expensive – often taking a year to a year and a half to complete the Probate process, and 5 to 7 percent of the deceased person’s net worth in attorney’s fees and costs alone to handle the Probate, and a matching amount of fees for the Executor. That is why even though a Will is easier and less expensive to put together (but more expensive in terms of emotional stress, time delays, and financial considerations) many people consider using alternative means of “estate planning.”

The second most common “estate planning” tool is the Trust. Years ago, back in the 1960’s and 1970’s, Trusts were only used by extremely wealthy people. That is because they take longer for the attorney to prepare (and therefore cost more), and before the advent of computers it was a much more difficult process to draft such a complex legal document – all errors required completely re-typing the documents, and the drafting process was more time consuming as a result. In recent years technology has made it possible for the average person to consider using a Trust as their “estate planning” tool because the relative cost has been driven down due to the technology assisted time savings in preparation. A Trust does cost more to prepare (that is the con), but can usually be handled as a self-executing document without the need to file anything in Court, often without any attorney’s fees to finish handling, and without the time delay and huge expense of a Probate. What a Trust is in reality is a contract with yourself to bifurcate title to your assets, splitting full title into “legal title” and “equitable title” and handing the “legal title” to your assets to the “Trustee” (usually yourself for life, then to a named successor trustee – often one’s spouse, or sibling, or trusted advisor), with the “beneficial title” (the use of the assets) going to the “beneficiaries” (yourself and your

spouse, then to your favored loved ones and/or friends or charities as you see fit). A simplistic analogy is a typical American family, the parents (like the Trustees) own the house, pay the mortgage and property taxes, mow the lawn, clean the pool, and the kids (like the Beneficiaries) get to live in the house and enjoy the pool.

The legal document (a Trust) creates the split of full legal title by a contractual arrangement – simply put you agree to do this in writing, sign the document properly in the presence of independent witnesses and a notary, and get the document notarized; this effectively puts all of your non-titled assets into the Trust (furniture, furnishings, artwork, china, silverware, coins and collectables, etc). Once the Trust document is properly completed you need to actually change title to your paper titled assets (real estate, vehicles, 401K's, IRA's, bank accounts, investment accounts, life insurance, etc…) to reflect that you have a Trust, and that the Trustee (and/or Successor Trustee(s)) have "legal title" to the assets.

Attorneys also prepare a legal document called a "Pour Over Will" to use in conjunction with a Trust. This is vitally important because if you forgot to put a titled asset into the Trust before you died, then there would be no easy way to change title to the asset without a complicated Probate process – which without a legal document instructing the Court what you want to do, may end up with a result you did not expect or want to occur. "Pour Over Wills" can be used in an expedited Probate process to quickly (2 to 3 months) change the title to an asset and get it placed into the Trust, and therefore the control of the Successor Trustee. This firm always offers to prepare the deeds necessary to transfer real estate into the Trust, and to get them recorded. This ensures that the larger asset(s) get placed into your Trust.

This firm educates our clients about the "estate planning" process, discussing pros and cons of the various tools available, and help guide our clients into making the decision what is best for them personally. In some cases a Will is preferable to a Trust, even though it costs more after death to handle the client's affairs – these are fairly rare circumstances, such as an expected legal fight between beneficiaries, huge creditor issues, etc.

With a Living Trust we can plan for you to avoid having a "Probate estate" and to avoid the huge expense, time delays, and to reduce the emotional burden of handling your legal affairs after you eventually pass. One other important factor involved in Trusts is that with a Trust, in conjunction with a carefully arranged life insurance policy, you can reduce the likelihood of your assets being subjected to inheritance taxes - or at least reduce the tax to the lowest amount your family would otherwise have to pay by law.

A bit more information to consider regarding the estate planning process, has to do with the federal government's taxation of estates. Each person has a "unified tax credit", or an amount which they are allowed to transfer to their heirs after death without paying any inheritance tax. Years ago this amount was set at $600,000 and it remained unchanged for a long time. As

property values increased, due to inflation and other factors, people became upset at the low threshold – above which they had to pay inheritance taxes (which are around 55%). This became a political issue, and Congress passed a law stepping up the threshold from $600,000, a bit each few years to the $2,000,000 mark in the year 2008. The 2009 tax year was the last raise of the threshold for the “unified tax credit”, and it went up to $3,500,000. The problem is that the law was repealed in 2010, and the threshold for the “unified tax credit” goes back down to $1,000,000 in 2011. That means that if you were to die in 2011 or afterwards then your trust estate would be subject to federal inheritance tax as to any and all value above the $1,000,000 mark. One of the most difficult parts about this kind of tax planning is that usually people have no idea how long they will live, in what tax year they will die, and people have no control over Congress whch passes these tax laws.

With this in mind, and the probable net value of your assets, if your gross trust estate exceeds $1,000,000 and that having language allowing you to chose to fund a trust together with a life insurance trust is a really good idea. You would not want you to end up with a tax problem for your beneficiaries to have to deal with down the road, so planning ahead is the best approach.