KMK KASS, MITEK & KASS, PLLC

Newsletter

A newsletter on general legal matters

www. kmklawyers.com Spring 2015

TRANSFER YOUR HOUSE AND AVOID PROBATE

By: Benny L. Kass, Esq.

Did you know that you can today transfer your District of Columbia or Virginia house to your children, but that the actual title transfer will not take place until you die? Under laws enacted by the legislatures of both jurisdictions, this is now possible. And Maryland lawmakers are also considering enacting what is commonly known as the Uniform Transfer on Death Act (TOD).

Promulgated by the Uniform Law Commission – of which I am a life-member representing the District of Columbia – this law permits you to pass real property simply and directly to a beneficiary upon your death without probate.

This is not a new concept: life insurance policies, pension plans and funds held in payable on death (POD) bank accounts are assets that have long been able to be transferred automatically upon the death of the owner.

This law is called a “will-substitute.” You prepare a deed – much like any other deed to real estate except that it contains a heading that reads: “Revocable Transfer on Death Deed.” The deed must contain all of the normal recording requirements of a regular deed - - legal description, notarized signatures - - to be recorded among the land records where the property is located.

(Continued on page 2)

CONDOMINIUM WATER LEAKS

By: Mark Mitek, Esq.

It is inevitable that a condominium will have some sort of water leak. Whether by rain from the roof or windows, a broken kitchen pipe or even an air conditioning condensation line – water leaks cause damage. Who (the unit owner or the Condominium Association) makes the repairs, and who pays for the damage?

INTRODUCTION

In general, a condominium consists of "units" and "common elements" – "limited" and "general." Such terms are defined and described in the Condominium Declaration. For example, limited common elements are items or areas that one or more, but not all, owners have an exclusive right to use. Further, the boundaries of a unit may be described as the interior surface of the drywall, ceiling and walls and the interior surface of the sub-flooring.

(Continued on page 3)

In this issue...

Transfer Your House and Avoid Probate 1
Condominium Water Leaks 1
Will or Trust 2
Bicycle Parking Requirement in DC 8
The Effect of Legalizing Marijuana in D.C 9

(Continued from Page 1)

Transfer Your House And Avoid Probate

The only - - and the main - - difference is that this deed will not take effect until you die. At that time – unless you revoke it during your lifetime – it will pass title directly to your named beneficiary (or beneficiaries) without the necessity of probate. Of course, if you have other assets, probate may still be required.

What if you change your mind? Note that the deed contains the word "revocable"; you have the absolute right to cancel – revoke – the deed. You either have to record a revocatory instrument or record a subsequent TOD deed naming a different beneficiary.

There are sample forms within the statutes themselves that you can use for the deed or the revocation in both the Virginia and the District laws.

Keep in mind that until you die, the TOD deed has no effect. It does not create any interest whatsoever in your beneficiary. We are sometimes asked whether the TOD will have any impact on your beneficiary's eligibility for public assistance until you die, and the answer is no; nor will creditors of your beneficiary have any claim against the property – at least until you die.

Although you can avoid probate, once the deed becomes vested in your beneficiary, the property remains subject to liens, encumbrances, and other claims that legitimately exist or can be filed against it. According to the Uniform Law Commission, "the beneficiary received only the interest that the transferor owned at the time of death, and the holders of any security interests in the property are protected."

What if you and your spouse own property jointly as tenants by the entirety? If you record a TOD, it will have no impact upon your death. By operation of law, your spouse will automatically obtain title instead of the beneficiary of the TOD deed.

The Transfer on Death Deed should be considered as but one option of handling your estate uon your death. While this concept may sound attractive, you should consider other planning arrangements – such as creating a revocable trust. Unlike the TOD, a trust can deal with your other assets as well as issues such as divorce, creditors, and incapacity, all of which may provide greater protection to your family.

And should you finally consider preparing a TOD, don't forget to monitor the situation periodically. Should your beneficiary die (or become incapacitated) before you die, you may have created a major problem.

This is a complex area; please consult Laurie O'Reilly in our office for more information about your specific situation.

WILL OR TRUST

By: Laurie Pyne O'Reilly, Esq

Estate planning attorneys are frequently asked the question: Is it better to have a will or a trust? The answer is: It depends on your specific circumstances. There are pros and cons to both.

In discussing the pros and cons, relevant terms must be defined and common myths debunked.

A last will and testament ("will") is a document or instrument in which you direct how and to whom your property is to be distributed at the time of your death. The legal formalities of a will depend on the state where you live, but generally, to be valid, a will must be in writing, signed by the testator (author of the will) and witnessed by two persons.

(Continued on page 6)

(*Continued from page 1)*

Condominium Water Leaks

The Declaration will also include which items (e.g., pipes, vents, windows) are part of the unit. In the most cases, the roof of the condominium building is a general common element, as stated in the Declaration. Thus, the roof is to be maintained, repaired and replaced by the Condominium Association, via the Board of Directors.

THE CAUSE

With any water leak, the first issue is to determine the cause of the leak. Is the cause the roof or a window wall? If it is the roof – a common element – the Association, via the Board, is responsible for properly repairing the roof (hopefully through the roof warranty company) as soon as possible. Otherwise, even if the Association is not liable for the initial leak, it may become liable for any subsequent leaks if it does not have the initial leak properly repaired.

Is the "cause" (e.g., the roof, a pipe, etc.) a common element or part of a unit? In most cases, this can be determined by reviewing the Condominium Declaration. Then, by reviewing the Condominium Bylaws, under the section concerning maintenance, repair and replacement, it can be determined who (the Association or the unit owner) repairs the cause (the roof, a pipe, etc.). If it is an emergency, the Association should make the repair as soon as possible. Afterward, the parties can determine who is to pay for the repair costs. Simply, stop the emergency – the water leak.

THE DAMAGE

The damage issue is where many people, including lawyers, get confused. There are two main issues regarding damage: (1) negligence/fault, and (2) insurance. The best way to explain these two issues is through an example. Assume there is a horrible rain storm that causes water to leak into the unit from the patio door, damaging the unit's hardwood floors and the unit owner's very expensive oriental rug. Further, the bottom portions of the kitchen cabinets that were recently installed by the unit owner are also damaged.

NEGLIGENCE/FAULT

Given the facts in our example of a horrible rain storm (once every 20 years), the first issue is whether the patio door and trim are part of the unit or are general or limited common elements. One would look to the Condominium Declaration for the answer, and then the Condominium Bylaws to determine who (the Association or the unit owner) is to make the repair. If the patio door and trim are general common elements, and the Bylaws state the Association is responsible for general common elements, then the Association makes the repair to the cause (in our example, the patio door and trim). The Association, via management, would also notify the Association's insurance company. If there is no negligence/fault by the Association (i.e., the patio doors never leaked before, or it was an isolated and exceptionally horrible rain storm), the damage to the unit is an insurance matter. As discussed below regarding insurance, the unit owner will not be pleased to hear that all the damage is not covered by the Association's insurance. However, as is said many times, the Association is not the guarantor of all damage. In short, if there is no negligence by the association, the Association is not responsible for all the damage.

(Continued on page 4)

(Continued from page 3)

Condominium Water Leaks

The Association insurance may cover some, but not all, of the damage.

INSURANCE

In the condominium world, insurance issues are the most difficult areas for people to understand. With our example of a horrible rain storm, and no negligence by the Condominium Association, the Board, via management, notifies the Association's insurance company of the damage. The company sends out an adjuster, and the adjuster determines what is covered by the Association's master insurance policy. In insurance jargon - is the incident a covered loss?

Depending on the facts of the specific incident and the policy terms, the Association's insurance may cover the hardwood floors, especially since they were the floors installed by the developer of the Condominium. As for the unit owner's oriental rug, there is most likely no coverage. The oriental rug is the unit owner's personal property. And those lower kitchen cabinets? There is most likely no Association master insurance coverage, since they were installed by the unit owner, and thus, considered "betterments." Such items should be covered by the unit owner's H-06 insurance policy.

Hearing that certain damage is not covered by the Association's insurance policy, a unit owner may threaten to sue the Association. However, if there was no negligence or fault by the Association, there is no liability upon which the unit owner may sue. However, in some cases, a lawsuit is filed for a judge or jury to determine if, in fact, there was negligence by the Association. Thus, if our example is changed just slightly, and the Board knows the common element patio doors are leaking and need to be replaced but wanted to try to make it through one more year because funds were not available to pay for all the patio doors and trim, that may be enough to show the Association was negligent, and thus, liable for all damage, including the unit owner's oriental rug and kitchen cabinets.

But wait! There could be one last out for the Association. The Condominium Bylaws may have a provision stating that the Association is not responsible (except for insurance coverage) for any leaks caused by rain, snow, ice, etc. Such a provision may certainly help, but it is not a guarantee that a judge or jury will decide in favor of the Association, especially if the Board was already put on notice of patio door leaks. If the Association did have notice of leaks, the Association may be able to show there was no negligence by having the patio doors periodically inspected by management and a consultant/expert, and by making repairs along the way.

And, if we change the fact pattern even further, so that the governing documents of the Condominium make the patio doors and trim part of the unit and allocate responsibility for repairs to the unit owner, then the owner of the unit must make repairs to the cause (the patio door and trim). Even so, the Association's insurance company should be contacted to determine if there is master insurance coverage. The unit owner should also notify his or her insurance company. In such cases, the result may be the same – the master policy will cover the hardwood floors, and the unit owner's insurance policy will cover the oriental rug and kitchen cabinets. But it all depends on the facts, the governing documents, and the insurance policy, and in some cases, the Condominium Act.

INSURANCE DEDUCTIBLES

Any discussion regarding insurance must include a determination of who (the unit owner or the Association) is responsible for the deductible. And yes, the answer depends on the facts, the Condominium Act and the governing documents of the Association. Last year, the DC Condominium Act was revised to provide: "If the bylaws do not indicate the entity responsible of a

(Continued on page 5)

(Continued from page 4)

Condominium Water Leaks

deductible amount if the cause of the damage to or destruction of a portion of a condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated shall be responsible for the association's property insurance deductible in an amount not to exceed $5,000; provided, that the unit owners' association affords notice to unit owners of this responsibility before the damage is caused." Accordingly, depending on what is stated as to deductibles in the Condominium Bylaws, the Association, via management, at the very least needs to send out a memo to all unit owners, stating that an owner may be responsible for the Association's master insurance deductible under certain circumstances (e.g., when the cause of the damage originates in a unit).

However, it is best if an Association amends its Bylaws to make unit owners responsible for the master deductible when the cause (e.g., the pipe) is part of the unit, or when there is negligence by the unit owner. Such an amendment can save an Association a lot of money over the years on insurance deductibles, which can cost anywhere between $5,000 and $10,000 for each incident. In short, if part of a unit (e.g., a kitchen pipe) leaks or if a unit owner is negligent, the owner (or more likely his/her insurance company) should be responsible for the Association's insurance deductible, and the Bylaws should specifically state such.

SUMMARY

With any water damage, whether caused by a roof, pipe, etc., the process of determining insurance coverage should include:

1. Determine the cause of the leak (e.g., the roof, a window or a pipe).

2. Review the governing documents and the Condominium Act and determine whether the cause is a common element or part of a unit.

3. If the cause is a common element (e.g., the roof) and the governing documents (usually the Bylaws) state the Association, via the Board, is responsible for its maintenance, repair and replacement, the common element should be repaired as soon as possible. And in most cases, it is a common expense. If the cause is part of a unit (e.g., a pipe), the unit owner is usually responsible for the repair, but first check the governing documents.

4. Notify the Association's insurance company of the damage. The unit owner should also notify his or her insurance company. Some Boards take the risk, depending on the damage, of not notifying the insurance company in an effort to avoid any increase in the Association's insurance premiums. This is very risky, especially if six months down the road, the unit owner files a lawsuit, and the insurance company claims no coverage for failure to promptly report a claim.

5. Follow up, follow up and follow up regarding the cause (e.g., the roof), as well as the damage. A unit owner may not like to hear that the Association's insurance company will not cover all the damage, but if the Board promptly follows up, no one will be able to claim the Board and management dragged their feet in addressing the matter. Communication, even with bad news, is so important.

The above Article should not be considered legal advice. It always depends on the facts, the Condominium Act, the insurance policy, and the Association's governing documents.

(Continued from page 2)

Will or Trust

Typically the testator names a personal representative, also called "executor," to administer the estate after death. A will does not take effect until death and is fully revocable as long as the testator has capacity.

Assets titled solely in the name of the deceased testator ("decedent") pass under the will and are subject to probate. Probate is the legal process of filing a will with the court and administering the decedent's property in accordance with court rules. It involves preparing an inventory of the decedent's assets and accounting to beneficiaries and creditors for those assets, as well as estate income and expenses. The decedent's final income tax returns need to be filed and any estate and inheritance tax returns prepared and filed. In addition, if there is income to the estate while it is open, tax returns for the estate need to be filed and the taxes paid.

Property held jointly with right of survivorship--such as a joint bank account or real property held as tenants by the entireties (reserved for married couples) or as joint tenants--passes directly to the survivor without passing through the will. Similarly, assets that require beneficiary designations--such as life insurance and retirement accounts--pass to named beneficiaries without the need for probate. In fact, a will has no power over such assets, known as "non-probate" property. If the decedent neglected to name beneficiaries or the named beneficiaries have already died, non-probate assets may become probate assets by default.

The procedure for initiating probate involves filing the will in the county or district where the decedent was domiciled at the time of death and filing a petition with the court asking for the personal representative named in the will to be appointed.

Filing fees are based on the value of the estate. For example, the filing fee in the District of Columbia for an estate with a value of between $200,000 and $500,000 is $575, and between $1 million and $2.5 million is $1,800. Additional costs include publication fees totaling around $300 to $400.

As for timing, once the will and petition for probate are filed, letters of administration, also called "letters of appointment," are issued within about a week, depending on the jurisdiction. In Maryland, letters can be issued by the probate clerk on the same day as filing. Once the personal representative is appointed, a notice declaring the appointment and the deadline for creditors to file claims is published. For example, in the District, a notice announcing the personal representative's appointment and the six month deadline for creditors to file claims is required to be published for three consecutive weeks in two publications of general distribution. Depending on the size and complexity of the estate, most decedent's estates can be administered and distribution made within one to two years after the estate is opened.

The cost to prepare a will depends on the size and complexity of the testator's estate, but is usually in the $750 to $1,500 range. We strongly recommend that our clients prepare a general and durable power of attorney, power of attorney for health care and living will or advance directive at the same time they prepare their will.

As for a trust, the most common type of trust is called a revocable living trust ("RLT"), also called an "inter vivos" trust. An RLT is a will substitute, and its primary purpose is to direct how your property will be distributed when you die, but without probate. Instead of a personal representative, the maker or "grantor" of the RLT appoints a trustee to administer the trust. The initial trustee is usually the grantor him or herself, with a successor trustee to take over after the grantor dies.

(*Continued on page 7*)

(*Continued from page 6*)

Will or Trust

While the intended purpose of an RLT is for the administration of the grantor's property, it only has legal effect over property that is titled in the name of the trust. Thus, even if the trust document states how the grantor's real property and bank accounts are to be distributed, if those assets have not been titled in the name of the RLT prior to the grantor's death, the trust will have no authority over those assets and they will need to be probated. It is therefore critical that the appropriate deeds and title changes from the grantor's name individually to the trust be made in order for the RLT to be effective. If not, probate will be required for those assets the Grantor owns at death which have not been transferred to the RLT.

For this reason, along with the RLT, it is also important to execute a will, referred to as a "pour-over will," so that any assets not titled in the name of the trust will be transferred into the RLT and distributed according to the trust terms. But when this happens, the primary purpose of the RLT--probate avoidance--has not been realized.

On the "pro" side of RLTs, the successor trustee is authorized to take over the trust assets immediately upon the grantor's death without the necessity of petitioning the court. The trust document itself, or a certificate of trust prepared according to statute, is the only documentation required to demonstrate that the successor has power over the trust assets. For example, in order for the successor to take control of the trust bank accounts, he/she will need to show a copy of the trust agreement or certificate to the bank along with a copy of the grantor's death certificate. With a will, before the personal representative can take control of the decedent's assets, a trip to the court clerk's office to submit a petition for probate is required, and a delay of between a day and a week or longer can result before the personal representative is appointed.

Also, on the "pro" side of RLTs is that they are private documents whereas wills are filed with the court and available to the public after the decedent's death. While this is not a deterrent for most people, some--perhaps public figures and celebrities--may choose an RLT over a will for this reason alone.

Although administering an RLT does not require the filing of any documents with the court, if the decedent was a District of Columbia resident, the successor trustee will most likely want to take advantage of the law that—like with probate--bars creditor claims after six months if a notice is filed with the court and published for three weeks. So it is not the case that administration of trusts is always without court involvement**.**

A situation in which an RLT may be preferable to a will is where you own real estate in more than one state. While the successor trustee of an RLT in most cases has authority to move directly to sell or distribute the trust real estate located in several jurisdictions, if the property is titled in the decedent's name individually, a "foreign estate" or "ancillary" proceeding must be filed in each jurisdiction where the property is located, and publication is usually required. While these ancillary proceedings are usually uncomplicated, they may add time and cost to the estate administration.

A common misconception about RLTs is that they have tax benefits. During the lifetime of the grantor, property in an RLT is treated for tax purposes as being owned by the grantor. Thus, income earned on trust property is reported as the grantor's income. Similarly, at the time of the grantor's death, trust property is included in the grantor's estate for estate tax purposes. There is no difference in tax treatment between assets owned in an RLT and by the grantor individually.

(Continued on page 11)

BICYCLE PARKING REQUIREMENTS IN THE DISTRICT OF COLUMBIA

By: John H. Brillian, Esq.

As of November 28, 2014, bicycle owners in the District who live in a residential building (which includes condominiums and cooperatives) containing eight or more units are entitled to secure parking spaces for the storage of bikes if they are in operable condition. According to the regulations, if a tenant or condominium unit owner provides a written request for a parking space, the landlord or condominium association must provide a "reasonable number" of spaces within 30 days of the request. The regulations adopted by DC Council can be found in 18 DCMR §1214-1216.

What is a "reasonable number"? According to the regulation, a reasonable number is one bike space for every three residential units or enough spaces to meet the requested demand. If possible, all required parking spaces are to be located inside the building. If not possible, then the spaces have to be secure, covered and adjacent to the property.

If the building cannot physically comply with the regulations, strict compliance would result in an economic hardship to the building, or the nature of the building use is such that bicycle parking spaces would not be used the property manager can file a written application for an exemption or for a reduced level of compliance with the District Department of Transportation Bicycle Program Office ("DDOT"). To receive an exemption, the building owner must complete the following application process:

- First, the building owner must submit a letter to the DDOT. There is no official application form, but each letter submitted must state the reasons why the building owner believes he cannot comply with the bicycle parking regulations.

- Next, the DDOT will respond with a letter requesting a site visit to determine whether the owner could comply with the regulations. Based on the circumstances, DDOT may choose to forgo sending the building owner a letter, and instead send an inspector to the location immediately. During the site visit, the inspector will pay particular attention to space constraints, indoor and outdoor capacity, and current bicycle parking accommodations.

- Finally, DDOT will send a letter to the building owner approving or denying the owner's application for an exemption. If DDOT denies the application, it will recommend alternative parking options based on the site inspection. For instance, if the inspector discovers that indoor space is insufficient for bicycle parking, the inspector will note whether there is adequate outdoor space available for compliance. If so, DDOT will recommend the building owner use available outdoor space to build bicycle parking spaces in compliance with the regulations.

Given the recent bicycle regulations, Boards and Property Managers should make sure there is sufficient bike space to meet the demand. And if not, a written application for an exemption or for a reduced level of compliance may be in order.

THE EFFECTS OF LEGALIZING MARIJUANA IN D.C.

By: Kateland R. Jackson

On February 26, 2015, the D.C. Council enacted a new law allowing a person 21 years of age or older to legally grow, possess, and use small amounts of marijuana in the person's private residence. The new law, entitled the "Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014," does not affect any prior or current laws making it illegal to possess or smoke marijuana in a public space. As such, the impact of the new law will mostly be felt at home.

In fact, that is exactly where homeowners Brendan and Nessa Coppinger felt the effects of their neighbor's now-legal marijuana use: in *their* home. For several months, the Coppingers observed a strong marijuana odor seeping into their home from the wall they share with their neighbor.

After repeated attempts to resolve the matter with the neighbor directly, and being fearful of the potential harmful health effects the fumes could have on their family, the Coppingers filed a lawsuit in the D.C. Superior Court. According to the complaint, the Coppingers primarily sought injunctive relief to stop their neighbor from continuing to smoke marijuana inside his home.

On March 2, the Superior Court awarded the Coppingers a preliminary injunction banning the neighbor from smoking marijuana anywhere inside his home. In granting the Coppingers injunctive relief, the Court reasoned that the marijuana smoke constituted a private nuisance.

The Court's decision in this case will likely expand D.C. residents' ability to bring a private nuisance action not only under the new marijuana law, but also as a result of other intangible irritants permeating their homes. To understand the full potential impact of this case, it is important to first explore the Court's understanding of nuisance and discuss when a preliminary injunction is appropriate to abate the nuisance.

Nuisance

"Nuisance" is a legal term of art that provides an individual a certain level of protection from another's trespassory or intrusive conduct. In D.C., a plaintiff in a private nuisance action must prove that a defendant's conduct is a substantial and unreasonable interference with the plaintiff's private use and enjoyment of his land.

What conduct constitutes a "substantial and unreasonable interference" under this definition? According to D.C. courts, a defendant's conduct is a substantial and unreasonable interference if it: (1) interferes with the physical condition of the land, disturbs the comfort of its occupants, or threatens future injury or disturbance; (2) is continuous, constant, or recurring; and (3) is not ordinary or expected based on the time and location of its occurrence. Further, the conduct is judged by an "ordinary person" standard, meaning the courts will not take into account a plaintiff's particular sensitivities.

Notably, it is possible for an individual's conduct to be in complete compliance with the law, but nevertheless constitute a nuisance. For instance, in the *Coppinger* case, the Court determined the marijuana smoke was in fact a nuisance, despite the fact that the neighbor's conduct was lawful pursuant to the District's new marijuana law. In a nuisance action, the plaintiff's actual harm suffered appears to be a more significant consideration to the court than compliance with the law.

(Continued on page 10)

(Continued from page 9)

The Effects of Legalizing Marijuana in DC

Preliminary Injunction

A preliminary injunction is an extraordinary remedy that compels an individual to act or refrain from acting in a certain manner throughout the duration of a pending lawsuit. If the case is decided against the enjoined party, the injunction will usually be made permanent.

To be entitled to a preliminary injunction, the plaintiff must prove: (1) there is a substantial likelihood the plaintiff will succeed on the merits of the case; (2) there is a substantial threat the plaintiff will suffer irreparable harm if the injunction is not granted; (3) more harm will result to the plaintiff from the denial of the injunction than will result to the defendant from its grant; and (4) the public interest will be served by granting the injunction. The decision to grant or deny a preliminary injunction is based on the court's discretion.

In the *Coppinger* case, the Court awarded the Coppingers a preliminary injunction because they were able to satisfy these four required elements. Specifically, the Coppingers made several attempts to resolve the smoke issue with their neighbor before finally filing a lawsuit. When deciding whether to issue an injunction based on nuisance, the court will likely take all resolution efforts into account.

Summary

Based on the Superior Court's recent decision in the *Coppinger* case, the new marijuana law may become a catalyst for D.C. residents to file more private nuisance actions and receive a higher rate of injunctive relief. Now that there is strong precedent on the books showing the Court's disapproval of intrusive intangible irritants, it is likely many more homeowners will seek to file suit to enjoin their neighbors who abide by the new marijuana law, but nevertheless create a nuisance.

So, what does a D.C. resident have to show to prove his neighbor's conduct—specifically, lawful marijuana use under the new D.C. law—is a private nuisance entitling him to injunctive relief?

To succeed in a private nuisance action, a D.C. resident should prove the existence of one or more of the following factors: (1) a physical intrusion into the home; (2) a disturbance in the comfort of the home's occupants; (3) a threat of future injury or disturbance; (4) some degree of permanence, continuousness, or reoccurrence; and (5) an intrusion that is not ordinarily expected based on the time and location of its occurrence. As was seen in the *Coppinger* case, whether the defendant's conduct is lawful does not carry as much significance as these other factors.

To receive injunctive relief based on a nuisance action, a D.C. resident should be able to satisfy the four elements required for a preliminary injunction. As was demonstrated in the *Coppinger* case, the court is more likely to find the plaintiff satisfies these four elements if the individual demonstrates he made attempts to resolve the offensive conduct with the defendant before resorting to litigation.

(*Continued from page 7*)

Will or Trust

While it is true that living trusts provide for the management of the grantor's property in the event of disability or incompetence, an individual without an RLT can execute a power of attorney granting someone the authority to manage all his/her financial affairs.

The cost of preparing the trust document and transferring title of property into an RLT is generally two to three times the cost of preparing a will. The savings on probate fees and costs after death is offset by the initial output of fees to prepare the documents.

While there is no probate with an RLT, there are still other costs of administration, including trustee, attorney and accountant's fees, taxes and costs of transferring title and assets to beneficiaries.

So is it better to have a will or a trust? It depends on your individual circumstances and wishes. But before deciding which way to go, it is important to know the facts.

Buying a new home or refinancing your existing mortgage?

Let Kass, Mitek & Kass, PLLC handle your settlement. We offer a full range of settlement services at very competitive prices. Call or email Brian L. Kass at briankass@kmklawyers.com to discuss or obtain a quote.

KASS, MITEK & KASS

A Professional Limited Liability Company

1050 17th Street, N.W., Suite 1100

Washington, D.C. 20036

Tel. 202.659.6500

Fax. 202.293.2608

email address: firm@kmklawyers.com

www.kmklawyers.com

Benny L. Kass, Esq.

Mark M. Mitek, Esq.

Brian L. Kass, Esq.

Laurie Pyne O'Reilly, Esq.

John H. Brillian, Esq.

Anthony R. Champ, Esq.

Kateland R. Jackson, Law Clerk