

# Morelli Legal Counsel, P.C.

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A FULL SERVICE LAW FIRM

## *Living Trust... Living Will What's the Difference?*

By Phil Craig

"My mom told me she has a living will. That way she's going to avoid probate"

I can't tell you how many times I've heard this when a new person finds out I was a living trust lawyer.

They go on to say, "She got one of those forms at the seniors' center. You know, the one she can fill out herself. They even witnessed it for her."

I hate it when this comes up, because I have to set the record straight, I have to let the person know that a "living will" and a "living trust" are two different instruments that serve two different purposes.

One, the "living will," is your statement that "If I am terminally ill or mortally injured (I'm using simple language here to get the point across), then don't hook me up to life support that will never return me to life." It's the issue that was being fought in Florida, with Governor Bush signing a law to keep a woman alive over her family's wishes and a court ruling.

Her "living will" has nothing to do with avoiding probate. It is a health care document. Really it should be called a "death desire," but our society can't handle that bluntness.



A "living trust," on the other hand, IS a probate avoiding document.

Basically, probate is used to transfer property you own when you die. If you have a will, your executor uses the probate court to carry out the terms of your will. If you die without a will, the laws of your state has statutes that describe where your property goes and who is in charge of getting it there.

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So, if you don't own any property when you die, then (generally...there are always exceptions) there is no need for probate.

This is where the living trust steps in. It's called a "living" trust because it is created while you are living.

When you create a trust, you transfer title to your property to the trustee of the trust. You, as an individual, no longer own the property.

So, if you die, no probate is needed (remember, there are always exceptions), since YOU don't own the property. The property is owned by the trustee of the trust. The trust instrument instructs him/her on what to do with the property upon your death.

A "living trust" is a LOT more complicated to set up and maintain than a "living will." They accomplish different tasks.

So, when you hear that a loved one has a "living will to avoid probate," it might be smart to ask a few questions.

© Phil Craig, All Rights Reserved. Phil Craig is a licensed attorney and entrepreneur. He started practicing law at age 25 in 1979. He does not take on any more clients, but is advisor to some of the biggest names in the internet world. He shares his knowledge gained over the last 25 years at his Living Trust Secrets newsletter site: <http://www.LivingTrustSecrets.com>



Ask us to  
explain these  
options to you.

**Contact us today to set up your living will and/or living trust.**

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## ***You May Be Liable If Employees Do Business By Car Phone***

You want your managers to stay productive, so you suggest they get wireless phones. You may even buy phones or reimburse for them. This is fine, as long as the employees don't drive carelessly.

In a Pennsylvania case, a Smith Barney broker who allegedly was talking on his cellular phone dropped it, bent down to get it, ran a red light and killed a motorcyclist. Smith Barney agreed to pay \$500,000 to the motorcyclist's family, which sued the firm for contributing to the accident.

Despite the company's big settlement, it argued that the accident occurred outside the scope of employment – at 9:30 on a Saturday night. And the firm didn't own the phone or the car. (Roberts v. Smith Barney, E.D. Pa. No. 97-CV-2727)

If you expect staffers to use car phones for business, be sure to write a policy that requires them to pull over while they talk.

***Consult your legal advisor for more information and advice.***

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## Negotiating To Win

Often when we think of “negotiating to win” we visualize someone raising their hands triumphantly and the other party going away defeated. In sales negotiations, the objective is to have both sides win. Let’s face it; if there is a win for the selling organization and a loss for the customer, the selling organization will eventually lose. If there is a loss for the selling organization and win for the customer, the customer eventually loses. Therefore, the Champion Sales Person seeks to have a win/win scenario where both the selling organization and the customer win.

There are four negotiation alternatives that the Champion Sales Person can use to arrive at a win/win:

1. Trade-off – giving the customer something in exchange for something of comparable value.
2. Enhancement – giving the customer something that is of high value to them, but at low cost to the sales organization.
3. Split the difference – meeting the customer somewhere between the original proposal and the counter to the original proposal.
4. Concede – giving the customer what they are asking for, without getting anything in return

A win/win is most likely to result from using the trade-off alternative. As you go down the hierarchy of negotiation alternatives, the salesperson decreases the chances of developing a win/win scenario. Conceding should only be done on minor issues that are of low cost to the selling organization, in order to secure the business.

The Champion Sales Person plans each negotiation by developing several alternatives for each objection to be negotiated. Planning the negotiation using the negotiation alternatives above, will allow you to confidently face each sales engagement, and succeed in the goal of obtaining a win/win.

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## Don't Try Docking Pay For Smoking Breaks

An employer who allowed his workers to take a series of short smoking breaks had to compensate them for the time.

### Reason:

Such approved short breaks (20 minutes or less) are considered hours worked under the Fair Labor Standards Act (FLSA). That opinion comes from an opinion letter by the U.S. Labor Department’s Wage and Hour Division. (*W&H Letter No. 2007*) The FLSA doesn’t require you to give workers rest periods, but if you do decide to allow short breaks, the time is compensable.



## ONE MINUTE IDEAS

### Making Decisions

William McKinley, The 25<sup>th</sup> U.S. President, once had to choose between two equally qualified men for a key job. He puzzled over the choice until he remembered a long-ago incident.

On a rainy night, McKinley had boarded a crowded streetcar. One of the men he was now considering had also been aboard, though he didn’t see McKinley. Then an old woman carrying a basket of laundry struggled into the car, looking in vain for a seat. The job candidate pretended not to see her and kept his seat. McKinley gave up his seat to help her.

Remembering the episode, which he called “this little omission of kindness,” McKinley decided against the man on the streetcar. Our decisions—even the small, fleeting ones—tell a lot about us.

Adapted from Presidential Anecdotes,  
Paul F. Boller, JR.

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