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Will vs. Trust: What's the Difference?

Estate planning is an essential part of holistic financial planning that can ensure the orderly distribution of assets to beneficiaries upon a person's death. Wills and trusts are two primary estate planning tools that serve similar purposes but possess significant differences. What you need will depend on your specific circumstances, and understanding the differences between wills and trusts will help you to decide how to use one or both to transfer wealth to your beneficiaries.

Wills and trusts are important tools in estate planning. What you need depends on your specific circumstances.

What is a Will?

A will is a written document outlining your wishes after your death. The most common type is a testamentary will, which can cover both your affairs and your assets. Your will can accomplish the following:

- Distribution of your assets and possessions according to your desires
- Appointment of guardians for your minor children
- Specification of final arrangements for your burial, cremation, funeral, or memorial

There are four key types of wills:

- A **simple will** is the most basic type of will and is often suitable for individuals with straightforward estates. It typically names an executor, beneficiaries, and guardians for minor children.
- A **living will** (also known as an advance healthcare directive) outlines your medical preferences in the event of incapacitation. For example, you might have a Do Not Resuscitate (DNR) clause in your living will that instructs healthcare providers not to perform CPR if your breathing stops.
- A **joint will** is a will created by two people, say you and your spouse, who wish to leave their property to one another in the case of the other's death, and then to designated beneficiaries.
- A **testamentary trust will** creates a trust upon your death, allowing for your assets to be managed by a trustee and distributed to beneficiaries according to the terms of the trust.

The creation of a will may be a simpler and less costly process than the creation of a trust, but there are also some disadvantages. Your will takes effect upon your death, at which time a legal process called probate will begin, which will subject your assets to examination by a probate court. This process can be lengthy—often six to 18 months—and contentious if family members contest the will. However, there are ways you can avoid probate or at least reduce the number of assets that must go through it. One of these is by establishing one or more trusts.

What is a Trust?

A trust is a more complex arrangement than a will. With a trust, you pass the title to property or assets over to a trustee, who becomes a fiduciary charged with carrying out your instructions for managing and distributing those assets to your beneficiaries. Passing over assets may involve reissuing deeds to real estate in the trust's name, reissuing titles to vehicles, changing the names on financial accounts, etc. Trusts become active as soon as they are signed and funded (when assets are legally passed over to it).

There are many types of trusts you can use for estate planning or even to carry out specific actions before your death:

- A **revocable trust**, or living trust, allows you to control the trust's assets during your lifetime and make changes to the trust or even revoke it.
- An **irrevocable trust** cannot be altered or revoked once created, but it potentially offers greater asset protection and tax benefits.
- A **testamentary trust** is one that is built into your will and comes into effect upon your death. It is, however, subject to probate.
- A **charitable trust** can be used to disburse assets to philanthropic enterprises.

You can have both a will and living (or revocable) trust that allows you to make changes and updates during your lifetime. No matter the type of trust, however, you can use it for a variety of purposes:

- Distribute your possessions before or after your death, according to your desires, to family, friends, or charity
- Outline specific rules, conditions, or timelines for distributing assets
- Set procedures for how your affairs should be handled if you become mentally or physically incapacitated
- Achieve certain tax advantages

One of the biggest benefits of trusts is that they are exempt from the probate process. However, trusts are typically more complex to create and manage and will likely require more support from a legal advisor, which means greater cost. And some trusts will limit your control over assets as well as eliminate your ability to modify their terms.

Do I Need a Will or a Trust?

The following table outlines the key differences, though such differences can vary widely depending on the state in which the trust is formed.

	Will	Trust
Effective date	After death	Upon funding
Probate	Yes, may take 6-18 months to resolve	No, assets can pass directly and immediately to beneficiaries
Privacy	Becomes a matter of public record during probate	Private arrangement
Can provide for guardianship of minor children	Yes	No
Process/management	Relatively simple	Relatively complex
Ownership of assets	Retained by you; easily accessible if you want to sell, etc.	Transferred to trust; less accessible if you want to sell, etc.
Contestability	More likely to be successfully contested	Less likely to be successfully contested
Control over how assets are to be distributed	Less	More
Tax benefits	No	Irrevocable trusts only
Protection from creditors	No	Irrevocable trusts only

Whether you need a will or a trust depends on your circumstances, and you should consult an appropriately qualified attorney in your state to help you make any final determinations. Most people need at least a simple will to clarify their wishes for asset distribution and final arrangements. If you have minor children at home, a will—with its provisions for guardianship—is critical. Trusts are more important if you have significant assets that you don't want your heirs to have to wait for or if you want to set specific directions for their distribution. If, for example, you wish to designate how and when a minor child will inherit specific assets, a trust will be valuable.

When considering wills vs. trusts, you'll want to consider your estate size, the value of your privacy, the number and complexity of the assets you own, the relationships among your beneficiaries, and the tax implications of your estate planning.

Can You Have Both a Will and a Trust?

It's quite common to have both a will and a trust. Since the documents can serve different purposes, you may need both to cover different aspects of your estate. If they are appropriately set up by an attorney, the two documents should not conflict. However, if they do, keep in mind the trust will likely prevail.

Are Wills or Trusts Needed If Beneficiaries Are Designated on an Account?

Even if your financial accounts have designated beneficiaries, a will or trust will likely still be necessary for comprehensive estate planning. A will allows you to name your executor, guardians for minor children, and provide instructions for the distribution of assets not covered by beneficiary designations, which could include anything from real estate holdings to personal possessions. Meanwhile, a trust can offer benefits such as probate avoidance, asset protection, and tax planning.

Speak to a KAR Advisor to Ensure Your Estate Plan Fits Your Financial Goals

It's important to obtain the professional advice of an estate attorney and financial planner as you work to develop an estate plan. If you die without any plan at all, the federal government and the government of the state in which you live will determine what happens to your property, bank accounts, securities, assets, and even the guardianship of your minor children. This can lead to results you would not desire and/or long court battles for your heirs.

Whether you choose a will or a trust, you should seek the advice of a qualified attorney in your state to establish what makes the most sense for your circumstances.

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