

## Will vs. Trust: What's the Difference?

*Both can be used to decide what happens to your property after your death, but there are significant differences beyond that.*

### What Is a Will and What Can It Do?



A will is a written document outlining your wishes for after your death. The most common type is a testamentary will, which can cover both your affairs and your assets. Some things you can do through a will are:

- Distribute your possessions, according to your desires, to family, friends, or charity
- Appoint guardians for your minor children
- Specify your final arrangements — burial, cremation, funeral, memorial, etc.

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

Your will takes effect after your death. All wills have to go through a legal process called probate, during which they are subject to examination by the probate court. This process can be lengthy—often six to 18 months. It can also be potentially contentious if family members contest the will—for example, if you want to disinherit an heir (child or spouse) with a legal right to inherit. A will can allow you to do this, depending on the laws of your state, but that does not mean your heirs may not contest the will.

### What Is a Trust and What Can It Do?

A trust is a more complex arrangement. With a trust, you pass the title to property or assets over to a trustee, who becomes a fiduciary charged to carry out your instructions on 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).



Several types of trusts can be used for estate planning or even to carry out specific actions before your death. A revocable or living trust allows you to make changes and updates during your lifetime. An irrevocable trust cannot be changed and removes assets from your taxable estate. A charitable trust can be used to disburse assets to philanthropic enterprises.

With these various forms of trusts, you can:

- 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

Trusts are exempt from the probate process.

## Trust vs. Will: Key Differences

What is the difference between a will and 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   |



## Do I Need a Will or a Trust?

If you die without any plan at all, the federal government and government of the state you live in 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 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 you want to set specific directions for their distribution. If, for example, you wish to designate how and when a minor child will inherit, a trust will be valuable.

Since the documents can serve different purposes, you may need both to cover all the bases. Although, if they are appropriately set up, the two documents should not conflict—the trust will likely prevail if they do.

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

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