

# MAKING SENSE OF LIVING TRUSTS AND WILLS

What's the best option for you when looking to transfer your estate to your heirs?



**AS YOU LOOK TO PROTECT YOUR ASSETS AND PASS THEM TO SUBSEQUENT GENERATIONS, ESTATE PLANNING TOOLS ARE ESSENTIAL. AND WHILE LIVING TRUSTS AND WILLS BOTH HELP ACCOMPLISH THE TASK, THERE ARE IMPORTANT DISTINCTIONS THAT YOU SHOULD UNDERSTAND BEFORE CHOOSING ONE OVER THE OTHER (OR IF CHOOSING BOTH).**

When deciding which instrument(s) to choose, you should seek the counsel of a financial professional who specializes in tax, investment, and legal advice.

## **Some terminology**

A will is a legal document that expresses the wishes of a deceased person. Those wishes can include guardianship matters and how cash or material objects are distributed. Its provisions take effect only after the person who made the will dies.

A trust, on the other hand, is active once you create it, and the grantor can specify how assets are distributed before their death. There are two main types of trusts: An irrevocable trust is a fixed document and cannot be changed; and a living trust can be changed after it is created.

When you create a trust, you designate a trustee who holds title to the assets that benefit a third party. Because of the trustee relationship, a trust is typically more expensive to draw up and manage than a will.

## **About wills**

A will is an integral component of estate planning; as such, an attorney may be helpful in considering the various legal and tax implications when creating and administering a will.

A will may contain the following: assets, debts, location and contents of safe deposit boxes, vehicles, and real property. The maker of the will can designate that family, friends, and/or charities receive their possessions.

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When the maker of a will dies, it goes through probate court. The process can be expensive as it typically involves a probate attorney (with the exception of life insurance policies and retirement accounts, which avoid probate).

Those with minor children should appoint a guardianship of their children in a will. Otherwise, the surviving family members will have to go to probate court to get one appointed. That person may not be the one you wanted to care for your kids.

If you die without a will, the laws of your state will determine who receives your assets. Depending on their value and parties involved, it can be a long, legal process to distribute them. Therefore, a will can help protect your survivors against unwanted tax liability.

### About trusts

Trusts are created for a variety of reasons. A living trust that is revocable can be altered during the lifetime of the trustor. When that person dies, the trust becomes operational. However, unlike a will, a living trust passes property outside of probate court, avoiding attorney fees. Your named beneficiaries receive the property immediately.

In a testamentary trust, the named trustee controls the passing of the trustor's estate once they die.

### Summary of differences

While both wills and trusts are important estate planning tools, they differ in significant ways:

- **Activation:** A trust is activated once the trustor signs in. A will does not take effect until the testator dies.
- **Probate:** A will must pass through probate court, while a trust does not.
- **Guardianship:** A will designates guardianship, whereas a trust does not.
- **Legal challenges:** A will can be challenged in court by the designated beneficiaries as well as those not designated as beneficiaries. A trust usually cannot be challenged.
- **Modifiable:** A will can be revised, and a trust can be revised if it is a revocable trust.

Because both wills and trusts are important estate planning tools, consider developing them early in life. That will make sure that your affairs are handled in the manner of your choosing, rather than a court's.

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