

WHAT'S THE DIFFERENCE
BETWEEN A

Will & Trust



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WHAT IS THE DIFFERENCE BETWEEN A WILL AND TRUST?

Everyone should have an estate plan. However, determining which type of estate plan is right for you can be difficult. Wills and living trusts are often the foundation of most estate plans. Each is a separate legal tool with its own set of advantages and disadvantages. While most people understand the purpose of having a will or living trust they often do not know the subtle differences between the documents. To understand the difference between a traditional will and a Living trust, you must first understand the basics of each. So what is the difference between a will and a trust?



LAST WILL AND TESTAMENT

A will, or last will and testament, is a legal document which allows a person, referred to as the testator, to make decisions on how their probate estate will be managed and distributed after their death. A will has no effect until one passes away. As such, it generally does not offer any protection for your assets while you are living.

Once a person passes, their will is usually submitted to the probate court where an estate is opened. The court then oversees the appointment of a personal representative, the payment of creditors, and the distribution of assets. Gifts made using a will are outright. Meaning, a person cannot put conditions or strings upon the gifts made in the will. A will is generally prepared as part of complete estate plan including durable power of attorney, healthcare power of attorney, and living will.



REVOCABLE LIVING TRUST

A trust is an instrument that allows a one party, called a trustee, to hold legal title to assets on behalf of another party, called the beneficiary or beneficiaries. The person that creates the trust is referred to as the trustor. The property within the trust is referred to as the trust assets, or the trust corpus.

Generally, when you create a living trust you are initially both the trustee and beneficiary. This means you keep full control over the property held in your trust. In addition, in the beginning you are the only party who can receive distributions from the trust.

A trust contains provisions to protect and distribute your property should you pass away or become incapacitated. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to your successor beneficiaries.

Summary of Differences

Probate	A will does not avoid probate. Generally, a will requires a probate estate to be opened and administered through the court.	A trust can avoid probate if set up properly. Avoiding probate can save substantial legal fees and court costs.
Gifts	A will allows you to make outright gifts. It does not, however, allow you to place conditions or restrictions on those gifts.	A trust allows you to place restrictions or conditions on gifts, i.e., setting an age at which gifts are made, restricting the use of a home, requiring an heir to earn a college degree. Moreover, a trust allows for alternate beneficiaries to avoid your wealth passing to an unintended person such as a child's spouse or step-children
Disability Planning	A will, alone, does not provide any protection for your estate should you become incapacitated.	A trust allows you to appoint a successor trustee to manage your affairs should you become incapacitated. Your successor trustee will manage the trust assets and make distributions to you or on your behalf as needed. As a result, your trust can help prevent a conservatorship proceeding.

Differences Continued

Control	A will only directs who is to be your personal representative and who is to receive your property. Nothing More. A will cannot be used to put additional restrictions on your heirs' gifts.	The assets of your trust are subject to the terms and conditions of your Trust. This means that your assets can only be used for those purposes outlined in your trust. Should you pass or become incapacitated, your trust directs how your successor trustee is to manage your affairs and make distributions.
Creditor Protection for your Debts	Your personal representative is required to pay all valid debts owed by your estate.	Your successor trustee is required to pay all valid debts owed by your estate.
Creditor Protection for your Heirs' Debts	A will requires distributions to be made to the named beneficiaries. Once the money is distributed to your heirs it may be subject to your heirs' creditors. If an heir is being sued, going through a divorce, or in bankruptcy your gift to them may be at risk.	A trust generally contains a spendthrift provision which can help prevent your heirs' inheritance from being taken by creditors. A spendthrift provision allows your successor trustee to hold assets in your trust until an heir's creditors are no longer a threat.
Costs	A will generally costs less to set up than a trust.	A trust costs more to establish in the beginning. However, there is generally substantial cost savings in the long run.

Differences Continued

Tax Planning	A simple will usually does not allow for tax planning.	A living trust can provide substantial tax benefits.
Privacy	A will generally must be filed with the probate court where it becomes a public document. In addition, your personal representative usually must publish notice of your passing in a local newspaper.	A trust offers more privacy because it is generally not filed with the court.
Minor Children	A will allows you to choose a guardian to provide care for your minor children. Your assets, however, will likely be tied up in a court for some time before being available for your children.	A Trust allows you to choose a guardian to provide care for your children. A trust also allows you to continue to provide financial support to your children seamlessly, without intervention by the court.
Flexibility	A will can be amended at any time before you die or become incapacitated.	A trust can be amended at any time before you die or become incapacitated.



WHICH IS RIGHT FOR YOU?

Starting an estate plan can seem daunting. But it does not have to be! Our attorney can guide you through the process making it quick and easy. As part of your estate plan, our firm can also provide you with a living will, medical power of attorney, durable power of attorney, special needs trusts and more!

Take the first step today by calling to set up your
free consultation
(248) 773-5555

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