



Family Legacy Protection Planner

WILLS VS. TRUSTS: IN PLAIN ENGLISH

Everyone has heard of wills and trusts. Most articles written on these topics, however, often presume that everyone knows the basics of these important documents. But, in reality, many of us don't – and with good reason – as they're rooted in complicated, centuries-old law.

Let's face it, if you're not an estate planning attorney, these concepts tend to remain merely that – concepts. So, if you're "fuzzy" about wills and trusts, know that you are not alone. After we show you the difference between these two documents, we'll tell you why a trust is the better choice.

Wills vs. Trusts: Defined

Let's take a minute and define both "will" and "trust":

Will. A will is a written document that is signed and witnessed. A will is considered a "death" document as it only goes into effect when you die.

A will:

- provides for the distribution of assets owned by you, but not assets directed to others through beneficiary designations (e.g. life insurance or retirement benefits)
- sends assets in your individual name or payable to your estate through the probate process
- allows you to appoint permanent guardians for your minor children
- names the person you wish to settle your estate (e.g. executor or personal representative)
- doesn't always include protective trusts for beneficiaries and tax planning because many wills are simple 2-3 page documents
- permits you to revoke or amend your instructions during your lifetime
- tends to cost less than a trust on the outset but costs more to settle during court proceedings after death

Trust. A trust is a legal document, signed and witnessed, and effective during your lifetime, during any period of disability, and after death. Because the trust is effective during your lifetime and you can change it, it's referred to as a "living" document.

A trust:

- has lifetime benefits
- provides for the distribution of your assets
- avoids probate if fully funded
- provides for a successor trustee upon your death or incapacity
- allows for the management of your property – even if you’re incapacitated
- can address appointing disability guardians for minor children
- often includes protective trusts for beneficiaries and tax planning
- permits you to revoke or amend your wishes during your lifetime
- costs more than a simple will on the outset but much less upon administration, while typically providing significantly more value

The Probate Process: A Key Element in Deciding Between a Will and Trust

One key element in deciding between a will and a trust is understanding the probate process. The term “probate” – which literally means “proving” – refers to the process wherein a decedent’s will must be authenticated, outstanding legitimate debts paid, and assets transferred to the beneficiaries.

The downside is that probate can take a long time - even years - it’s expensive in many places and the entire process is completely public, meaning your nosy neighbor Nancy and evil predator Paul both know exactly who got what and how to contact them. In virtually all cases, the only upside of probate is that creditor claims are cut off.

- **Probate Guaranteed with a Will.** If you use a will as your primary estate planning tool, you own property in your individual name, or property is made payable to your estate, probate is guaranteed.
- **Probate Avoided with a Trust.** If you use a fully-funded trust as your estate planning tool, probate is avoided - saving your family time and money.

The Bottom Line on Wills vs. Trusts

HOW TO DECIDE: As everyone’s situation is different, it’s important to analyze every aspect of your situation – and what the future may hold – so that you can determine what’s right for you and whether probate avoidance, incapacity planning, and trust protections have value to you and those you love. Most people receive the greatest overall benefit from having a trust.

ACT NOW: Without an estate plan in place, you and your family are left completely unprotected. Call our office now and we’ll help you determine whether a will or a trust makes sense for your situation. You don’t have to make these decisions alone.

ENSURE YOUR FAMILY IS PROTECTED

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco’s premier estate planning attorney, Matthew J. Tuller.

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With an emphasis on developing and maintaining relationships with our clients and allied professionals, our firm collaboratively provides comprehensive estate planning and administration solutions to every client. Our firm provides the full spectrum of estate planning solutions. This includes creating and implementing a comprehensive estate plan, maintaining that plan through life, and administering the plan in the most effective and efficient manner.



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