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Estate Planning 101: Wills vs. Trusts

Wills and trusts are two of the most commonly used estate planning documents, and they form the foundation of most estate plans. While both documents are legal vehicles designed to distribute your assets to your loved ones upon your death, the way in which they work is quite different.

From when they take effect and the property they cover to how they are administered, wills and trusts have some key differences that you need to consider when creating your estate plan. That said, when comparing the two documents, you won't necessarily be choosing between one or the other—most plans include both.

In fact, a will is a foundational part of nearly every person's estate plan. Yet, you may want to combine your will with a living trust to avoid the blind spots inherent in plans that rely solely on a will. As you'll learn below, the biggest of these blind spots is the fact that if your estate plan only consists of a will, you are guaranteeing your family has to go to court if you become incapacitated or when you die.

To determine the right solution for your family, you should meet with us, your Personal Family Lawyer® for a Family Wealth Planning Session™. We offer a comprehensive process for helping you feel confident that you've chosen the right planning tools at the right fees for yourself and the people you love.

In the meantime, here are some of the key differences between wills and trusts that you should be aware of.

When They Take Effect

A will only will go into effect when you die, while a trust takes effect as soon as it's signed and your assets are transferred into the name of the trust, known as "funding" the trust. To this end, a will directs who will receive your assets upon your death, while a trust specifies how

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your assets will be distributed before your death, at your death, or at a specified time after death. This is what keeps your family out of court in the event of your incapacity or death.

Furthermore, because a will only goes into effect when you die, it offers no protection if you become incapacitated and are no longer able to make decisions about your financial, legal, and healthcare needs. If you do become incapacitated, your family will have to petition the court to appoint a conservator or guardian to handle your affairs, which can be costly, time-consuming, and stressful.

And there's always the possibility that the court could appoint a family member as a guardian that you'd never want making such critical decisions on your behalf. Or the court might select a professional guardian, putting a total stranger in control of just about every aspect of your life and leaving you open to potential fraud and abuse by crooked guardians.

With a trust, however, you can include provisions that appoint someone of your choosing—not the court's—to handle your assets if you're unable to do so. When combined with a well-drafted medical power of attorney and living will, a trust can keep your family out of court and out of conflict in the event of your incapacity, while ensuring your wishes regarding your medical treatment and end-of-life care are carried out exactly as you intended.

The Assets They Cover

A will covers any asset solely owned in your name. A will does not cover property co-owned by you with others listed as joint tenants, nor does your will cover assets that pass directly to your loved ones via a beneficiary designation, such as life insurance, IRAs, 401(k)s, and payable-on-death bank accounts.

Trusts, on the other hand, cover any asset that has been transferred, or "funded," to the trust or where the trust is the named beneficiary of an account or policy. That said, if an asset hasn't been properly funded to the trust, it won't be covered, so it's critical to work with your Personal Family Lawyer® to ensure your trust works as intended.

Most lawyers will set up a trust for you, but few will ensure your assets are properly inventoried or funded, and we believe this is the single most important aspect of estate planning—and it's one that is almost always overlooked. As your Personal Family Lawyer®, we will not only make sure your assets are properly inventoried and titled when you initially set up your trust, we'll also ensure that any new assets you acquire over the course of your life are inventoried and properly funded to your trust on an ongoing basis, with various maintenance plans to ensure your plan works when your family needs it. This keeps your assets from being lost and prevents your family from being inadvertently forced into court because your plan was never fully completed.

Finally, even with the support of a lawyer like us, it can sometimes be difficult to transfer every single one of your assets into a trust before your death. Given this, consider combining your trust with what's known as a "pour-over" will. With a pour-over will in place, all assets not held by the trust upon your death are transferred, or "poured," into your trust through the probate process.

How They Are Administered

In order for assets in a will to be transferred to a beneficiary, the will must pass through the court process known as probate. During probate, the court oversees the will's administration, ensuring your assets are distributed according to your wishes, with automatic supervision to handle any disputes.

However, probate proceedings can drag out for months or even years, and your family will likely have to hire an attorney to represent them, which can result in costly legal fees that can drain your estate. During probate, there's also the chance that one of your family members might contest your will, especially if you have disinherited someone or plan to leave significantly more money to one relative than the others.

Bottom line: If your estate plan consists of a will alone, you are guaranteeing your family will have to go to court if you become incapacitated or when you die.

Furthermore, since probate is a public proceeding, your will becomes part of the public record upon your death. This means everyone will be able to learn the contents of your estate, who your beneficiaries are, and what they inherit, setting them up as potential targets for scam artists and frauds.

Unlike wills, trusts don't require your family to go through probate, which can save them time, money, and the potential for conflict. Plus, when you have a trust set up, the distribution of your assets happens in the privacy of our office—not the courtroom—so the contents and terms of your trust will remain completely private.

How Much They Cost

Wills and trusts do differ in cost—not only when they're created, but also when they're used. The average will-based estate plan can run between $2000 to $4,000, depending on the options selected. An average trust-based plan can be set up for $4,000 to $6,000, again depending on the options chosen. So at least on the front end, wills are less expensive than trusts.

However, wills must go through probate, where attorney fees and court costs can be quite pricey, especially if the will is contested. So even though a trust may cost more upfront to create than a will, the total costs once probate is factored in can actually make a trust a significantly less expensive option in the long run.

That said, each family's circumstances are different, and this is why as your Personal Family Lawyer® we do not create any documents until we know what you actually need, and what will be the most affordable solution for you and your family, both now and in the future, based on your family dynamics, your assets, and your desires.

With this in mind, our Family Wealth Planning Session Process™ is designed to compare the costs of will-based planning and trust-based planning with you, so you know exactly what you want and why, as well as the total costs and benefits over the long term.

Find The Option That's Right For Your Family

The best way for you to determine whether or not your estate plan should include a will, a living trust, or some combination of the two is to meet with us as your Personal Family Lawyer® for a Family Wealth Planning Session™. During this process, we'll take you through an analysis of your assets, what's most important to you, and what will happen to your loved ones when you become incapacitated or die.

Sitting down with us, your Personal Family Lawyer® will empower you to feel 100% confident that you have the right combination of estate planning solutions to fit with your unique asset profile, family dynamics, and budget. Schedule your appointment today to get started.

This article is a service of Saeed & Little, LLP, Personal Family Lawyer®. We do not just draft documents; we ensure you make informed and empowered decisions about life and death, for yourself and the people you love. That's why we offer a Family Wealth Planning Session™, during which you will get more financially organized than you've ever been before and make all the best choices for the people you love. You can begin by calling our office today at 317-614-5741 to schedule a Family Wealth Planning Session and mention this article to find out how to get this $750 session at no charge.

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