

WILL

VS.

TRUST:

WHICH IS BEST FOR YOU?



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You have important estate planning choices to make

When creating or updating your estate plan, it's often useful to start with the question "why?" For example, you might ask yourself: "Why is my estate plan important to me?"

While the "how" of a well-formulated plan usually drives the conversation surrounding estate planning, knowing the reasons why you want to create a sound plan is key for ensuring you have the right plan in place for your unique circumstances and life story.

For many people, the answer to this question relates directly to the legacy they hope to leave behind and their desire to take care of loved ones. While taking care of loved ones often means providing for them financially, it's

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also important to ensure that your family and friends are not left with unnecessary burdens, headaches or problems that could be avoided with proper planning.

The bare minimum a person can do to protect their loved ones from the woes of inadequate planning is to establish a will. This is because to pass away "intestate," or without a will in place, almost guarantees that your loved ones will be left with the hassle, pain and confusion of working within the laws that control how a person's assets will be distributed when they haven't taken the time to document their preferences.

So, while not engaging in estate planning is an option, it's not the right choice for anyone who cares about their loved ones' well-being after they pass. Leaving your family at the mercy of the inflexible intestate process is the most disorganized, risky and expensive way to distribute your estate. As a result, without any planning, the "legacy" you leave behind is tantamount to a complete mess.

Once you decide to make a plan and avoid this disastrous scenario, the next logical question is "how?" In this instance, you might wonder what your options are for how to create your estate plan so that it addresses your own personal "why."





The two main choices to consider are a will or trust (otherwise known as a revocable living trust). Determining which strategy is best for you depends on your situation and your goals – or the “why” of your plan.

A will is the most common choice, but that does not mean it’s the right choice for everyone. Wills are often used because they are familiar and can be more accessible. However, they also are frequently used because many people are simply unaware of some of the pitfalls and downsides of using a will as the main document for their estate planning.

Trusts have additional features and benefits that are not available with a will, but this does not necessarily mean it is the right option for you. Trusts tend to be more costly and require more steps to complete, but if the mechanisms offered by a trust are better suited to your circumstances, then it will be well worth the time and expense.

Both wills and trusts have advantages and disadvantages, and neither is the best choice for everyone. In reading this booklet, you will learn about the features of a will and a trust and be able to compare these alternatives in order to make an informed determination of “how” to structure your estate plan.

Wills

A last will and testament is a traditional estate planning document that many people presume to be the primary way to “get their affairs in order.” As mentioned, a will documents your wishes as to how your assets will be distributed so that your state’s laws do not control how your wealth and possessions are passed on. In that way, a will replaces the default plan that is provided by your state’s intestacy laws, which govern the estates of those who fail to create a will or have a will that is later found to be invalid.

With a will, you set forth your beneficiaries and the assets they will receive from your estate after your lifetime. In addition, you designate a personal representative to be in charge of settling your estate, and you can also name a guardian for any minor children you may have.

In general, a will controls what happens to your assets and who will oversee the distribution process after your death. While a will can be a relatively inexpensive option, it is limited in scope and usefulness to only this purpose. A will does not legally control anything until your death, so it cannot be used for any financial or planning purposes during your lifetime. In addition, because a will must go through probate — the court process for proving a will is valid and then overseeing the appropriate distribution — your assets generally must be transferred to your beneficiaries shortly after your passing. This means that with a will, your assets cannot be distributed over time, even if you would prefer for minor beneficiaries or those who might need additional assistance to receive them over a longer timeline.

To know whether or not a will is the right choice for you, the following sections provide more in-depth information about how a will works and the factors that might make this option more or less suited for your particular situation.




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How does a will distribute my estate?

A will directs how your assets will be distributed among your beneficiaries after your death. As previously explained, a will has no legal authority whatsoever during your lifetime. This is a common misconception, as often people with a will assume that it would take effect during a period of incapacitation or other serious life event.

It is important to know that a will does not authorize anyone to act on your behalf while you are still alive. If you become incapacitated, or unable to make decisions for yourself, the person named as your personal representative cannot access your accounts to pay your bills or otherwise manage your financial affairs.

This means that if your only estate document is a will and you become incapacitated, your loved ones will not be able to act on your behalf without court authorization. Although this may seem unthinkable, it happens more often than many realize. A car accident or serious illness could strike without warning, requiring hospitalization and leaving you unable to make or communicate decisions to others. If this is the case, then a will offers you and your family no protection against the consequences of failing to pay medical bills and manage



If the judge determines that your will is invalid, or there is some defect that makes it unenforceable, then your state's intestate laws will apply as if you never completed a will at all.

your finances, or even making medical decisions that go against your known wishes.

In addition, wills carry no legal authority until they have been probated, or proven by a court to be valid. In some ways, this means that a will is more like a letter of instruction until it has gone through probate. This is because until that time, a will in and of itself does not allow anyone — even your personal representative — to make decisions on your behalf or on behalf of your estate. Unlike

trusts, wills do not take effect without action by a probate judge.

Although most people have heard of probate, few actually understand what this process entails. In essence, probate is a public legal process in which a probate court judge determines if your will is valid, authorizes your personal representative to act and generally oversees the process of distributing your assets to your stated beneficiaries. The first step in the process is determining your will's validity, as distribution will not take place unless and until the probate judge determines that your will is valid. If the judge determines that your will is invalid, or there is some defect that makes it unenforceable, then your state's intestate laws will apply as if you never completed a will at all.

While this may seem simple enough, the probate process can be arduous and complicated, especially if you own property in different states or have other factors that could make your estate special in any way. In the next section, we will explain why most people would prefer to avoid probate and how you might go about structuring your estate plan to prevent your loved ones from having to endure the frustrations of this burdensome process.

Why is probate not a preferred route?

For those who understand estate planning solely as creating a will, probate can seem like a “necessary evil” — as inevitable as taxes, or even death itself. As the main requirement for a will to take effect, it’s true that probate is necessary when your estate plan is based primarily on a will. However, it’s not true that probate and its many downsides are inevitable. With proper planning and professional guidance, you can help your loved ones avoid the following reasons that probate is usually undesirable.

COST

When considering the cost of different estate plan options, it’s important to take into account not only the cost in planning, but also in executing your plan. While a will may be less expensive to create, it cannot take effect after your lifetime without your estate incurring the expense of probate.

Depending on your state and the complexity of your asset distribution, the cost of probate could be tens of thousands of dollars. And if you have property in multiple states, your estate will be required to pay for probate in each state separately.

These expenses can add up quickly, depleting your hard-earned wealth without any concern or protections in place for preserving your assets for your loved ones. And if your estate is contested, meaning any person files a petition challenging the validity of your will or its terms, then the process will likely be prolonged and require much more of the court’s time — time that will cost money and further reduce the ultimate value of your estate.



DELAY

Probate is a notoriously slow process that can take months to years to complete. If your estate is simple, uncontested and straightforward, then it could be several months before your loved ones receive their inheritances from you. However, if there are any complications in the probate of your estate, then the process could take much longer.

In addition, there are often delays unrelated to your specific circumstances that cannot be avoided. Backlogs in cases, underfunded court systems and general bureaucratic sluggishness can cause probate for your estate to drag on much longer than necessary. This can create inconvenience and frustration for your loved ones, preventing them from being able to process their grief and move on with their own lives.

PUBLICITY

Another downside of probate is that it's a very public process. While in certain circumstances your personal representative may be able to have the court seal the details of your estate, the vast majority of probate cases are part of the public record, available for anyone to read.

This means that if you have any concerns about your privacy, or about protecting the privacy of your loved ones, a will likely is not the best option for you to choose. This is especially true in cases where the distribution of your assets could be perceived as controversial, whether that means an unequal inheritance for your children, leaving out a sibling who expected an inheritance or even disinheriting a child or other family member.

Even if your estate doesn't seem controversial in nature, the public nature of probate could mean subjecting your loved ones to predatory people who might take notice of their inheritance and target them for a scam or other crime. As publicity is generally part and parcel of probate, it's important to consider alternative options — like a trust — if you are concerned about this consequence of using a will as your primary estate planning document.



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LACK OF CONTROL

When the probate process begins, the probate court and the judge assigned to your case assume a great degree of control over your estate and asset distribution. The timing, methods and supervision over your possessions are all within the court's discretion, leaving little control for your loved ones — even your personal representative.

In addition, the probate process in and of itself is restrictive in terms of how you leave your assets to your family and friends. As mentioned, probate is time-restricted, meaning everything subject to probate within your estate must transfer ownership or be sold and paid out by the time the process is complete. So, if you have any minor beneficiaries, or if it would be preferable to space out the distributions to your beneficiaries over time, you're out of luck.

Similarly, if you have any real property (homes, land, etc.) in your estate that is not specifically left to a beneficiary, then it likely will be sold as quickly as possible to ensure the proceeds are timely distributed. This means that even if your loved ones would benefit from waiting to sell a home or piece of property until an optimal time in the housing market, your personal representative has no authority to make that call. Instead, the probate judge will take action, with expediency as their chief concern.



FAMILY DISPUTES

Unlike other estate settlement processes, probate often lends itself to inciting family disputes that could otherwise be avoided. This is partially because of the public nature of probate, as family members who might otherwise be unaware of inequities and other details that could cause strife will have full access to information about your estate distribution.

Additionally, the probate process inherently makes contesting your asset distribution easier for family members who are unhappy about their inheritance — or disinheritance. With trust distribution, it is much more challenging to win a claim that would result in a different distribution than the terms dictate. With probate, however, will contests are much easier to file and more likely to be seriously entertained by the probate judge, no matter how frivolous. This means that family members who might otherwise accept your decisions could be more inclined to take action against your estate and challenge the inheritances of your beneficiaries within probate.

UNCERTAINTY AND UNINTENDED CONSEQUENCES

As you can see, the probate process can result in a great deal of uncertainty for your loved ones, along with consequences you never intended when you completed your will. When someone passes, it's a challenging, painful time for the people who love them regardless of the circumstances. With probate, your family and friends are forced not only to endure the grief of loss, they also are subjected to the uncertainty of the court process, unintended disputes within the family and a myriad of other unexpected hurdles that could all be avoided with proper planning.

Reasons a will may not be the best choice for you

In general, a will may not be your best option if you are keen to avoid the pitfalls of probate and are concerned about a will's limitations for protecting you during your lifetime. Remember, a will does not take effect until death and probate, so it is important to consider other protections against the risk of incapacity. When you only have a will in place and you experience incapacity, the court will need to appoint a legal guardian to make decisions on your behalf. Guardianship, like probate, is also a public court process, and proceedings cost on average between \$5,000 and \$10,000.

In addition, there are other specific circumstances that make a will less desirable for estate planning. These include blended families, unmarried couples, people with numerous children and people who own real estate in multiple states.

BLENDED FAMILIES

Blended families are particularly unsuited for estate planning centered around a will because of the various interests you might not find in a simpler family structure. Second or subsequent spouses, children from different marriages and ex-spouses all commonly lead to dynamics that contribute to a greater risk of a will contest and discontent with your desired distribution. With a will, the probate process exposes your estate to a greater degree of this risk than would otherwise be present.

UNMARRIED COUPLES

Because marriage is solely a legal matter in the eyes of the state, the decision not to marry could become extremely problematic in the context of probate. Your partner does not have the same legal standing as a married spouse, and so any complications or issues with an intended distribution could leave him or her out in the cold. For this reason, if you are not married to your partner, it could be beneficial to use a trust, as there is less risk of a successful contest or determination of invalidity that could potentially lead to unintended consequences for your loved one.



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NUMEROUS CHILDREN

A big family with many different personalities, motivations and personal interests can be a lot of fun during times when everyone is getting along. But it can also be extremely challenging when there is any conflict or disagreement within the group. With each additional child, you have another viewpoint or opinion about the best way to handle any given issue, and estate distribution is no different. As the time following the loss of a parent is already difficult, heightened emotions can make this dynamic even more precarious. Consequently, using a will to set forth the inheritances of several children can often lead to preventable drama and hurt feelings between siblings. The lack of privacy and tendency to encourage will contests mean probate is likely not the best route for protecting your children from each other.

REAL ESTATE IN MULTIPLE STATES

When you own property in multiple states, your personal representative must file probate in each of those states. This can exponentially increase the time, cost and hassle for your loved ones. Consequently, a will is most likely not the best option if you own homes, land or other real property interests in more than one state.

Last Will and Testament

Advantages

- + Provide clear title to assets
- + Provides forum to resolve disputes with creditors and family
- + Limits time for creditor claims against estate
- + Potentially less expensive to create

Disadvantages

- Subject to hassle of probate process
- Estate administration delays
- Cost of probate
- Lack of privacy
- Family not in control
- Personal representative has limited discretion over timing of distributions



Revocable living trusts

A revocable living trust is a common alternative to a will that has become increasingly popular in recent years. No longer just a tool for the uber-wealthy to reduce their estate tax burden, trusts offer many advantages that people with estate values of all sizes can use. This includes the ability to keep their affairs private and protection against financial ruin due to incapacity. In the sections that follow, we will explain how a trust works and the attributes that might make a trust a better option for you to consider.

How does a trust manage my estate?

Unlike a will, a trust is a financial and estate planning vehicle that takes effect immediately. It is technically considered a contract that is intended to assist with the management of your affairs. Effective when signed, trusts not only govern the distribution of assets held within them upon death, but they also offer specific, useful benefits during your lifetime. Trusts do not require approval of a judge to be effective, and they also permit the trustee — or person charged with administering the trust — to manage the trust's property without a judge's order.

One of the added benefits of a trust is that its protections can come into play during a period of incapacitation. If you happen to become incapacitated because of a serious illness or injury, your trust becomes invaluable, as the person you designate as the successor trustee is immediately authorized to manage your assets based on the instructions in your trust. As a result, your trust can



help you to avoid an expensive and public guardianship procedure should the need arise. In this scenario, your successor trustee does not need to be appointed by a court or secure court approval for their actions. What's more, your incapacity remains private, instead of in a public court record.

When a trust is your central estate planning document, the distribution process after your lifetime is also more streamlined, and there is less risk of your wishes being subject to challenges from dissatisfied family members.

Upon death, the successor trustee distributes the assets to the named beneficiaries according to the instructions in the trust document. The successor trustee manages and distributes the assets privately and without court involvement. Also, the successor trustee is immediately responsible for your assets at your passing, so your loved ones can avoid the delays, hassles and costs of probate.

What are other advantages of a trust?

In addition to privacy and retention of control, a trust can also be drafted to preserve your assets so that the maximum value of your wealth is available to benefit your family after your lifetime. The following strategies could be employed to help achieve that goal.

TIMING OF INHERITANCE

Unlike a will, a trust offers you much greater flexibility in terms of how and when your assets are distributed to your beneficiaries. To do so, the trust can be drafted to give discretion to the successor trustee to delay distributions taken by a third party.

For example, a successor trustee might decide to delay distributions to children who are in the middle of a divorce or lawsuit, or children who are being pursued by creditors at the time of distribution. In this way, a trust can arrange the timing of a distribution so that it truly benefits the intended person.

In addition, this discretion could be used to ensure that a beneficiary is fully prepared to manage their inheritance. If the intended person is a minor, has substance abuse issues or is otherwise ill-prepared to receive a lump sum or substantial asset, then the trustee can arrange for the distribution to occur once the person is in a better position to receive it.

A will, or even a beneficiary designation for a retirement account or other transferrable-upon-death asset, does not provide any flexibility to help protect beneficiaries from themselves. Consequently, people who leave their children or other beneficiaries money or homes that they cannot manage often set up their loved ones to squander their money or lose the asset due to inability to pay property taxes or other upkeep expenses.





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SPENDTHRIFT CHILDREN

Many people work hard throughout their lives to give their children a better life and more prosperous future. When considering their financial legacy, the parents' primary concern is often ensuring their children have what they need regardless of what happens in their lives.

However, it can be challenging for these parents if their children are not as frugal or knowledgeable about personal finance as they would like. If your children have a spending or financial management problem, or if they are simply unprepared to take on significant inheritance all at once, a trust can provide a stream income instead of lump sum, or it can provide discretion to a trustee regarding the amount and timing of a distribution.

These options are not available with a will, so an inheritance received all at once following probate could be quickly lost if this scenario applies to your personal circumstances.

SPECIAL NEEDS BENEFICIARIES

It is critically important for parents whose children or grandchildren have special needs to plan wisely for their future. This is because without proper planning, any inheritance that a person with special needs receives can be used to disqualify them from receiving essential government benefits to which they are entitled.

A will offers no protection for these family members, as it cannot be crafted to avoid benefits loss through an inheritance. Those funds will likely be taken into account when determining benefits eligibility, and this can result in a complete loss of state resources and services. A trust, however, can be drafted to include a provision to prevent people with special needs from losing these valuable benefits while still providing financial support that will enrich their lives and protect their well-being long into the future.

Why might a trust be right for my family?

A revocable living trust may be the right choice for you if the concerns outlined here apply to your circumstances. For example, if you are worried about protecting your own privacy and the privacy of your loved ones, then you likely will want to consider this option. Additionally, if reading about the delays, cost and burden of probate struck a chord with you, then a trust could be a better choice than a will. And while most people never expect to become incapacitated, if you are strategic about planning for whatever the future may hold and wish to protect your loved ones in case of an accident or illness, then a trust would offer invaluable benefits to consider.

Trusts also offer added advantages for people who have special circumstances requiring more thought or planning. A second or subsequent marriage, owning real estate in more than one state, a large or blended family or special needs children or grandchildren each involve different considerations or challenges that a trust could be better suited to address.

Finally, when using a trust, you can also employ other estate planning documents to establish a complete plan that offers protection against a variety of life events and concerns. This can include powers of attorney

for finances and health care, which can be used in conjunction with a trust to give someone of your choosing authority over matters outside the scope of the trust in case of incapacitation. With a power of attorney for finances, you can name who will be responsible for managing assets not funded into the trust, which could or could not be the same person serving as your successor trustee. A power of attorney for health care, on the other hand, enables you to name a person to make medical decisions on your behalf. This person doesn't necessarily need to have the personal finance experience you may want for your successor trustee

or financial power of attorney, and he or she can work in conjunction with your successor trustee if you do decide to name different people for these important roles.

While a trust is often a superior option to a will for these reasons, we highly recommend working with a Legacy Assurance Plan network attorney who focuses their practice on estate planning to determine the right option for you and your loved ones. Only with this expert advice can you have the peace of mind of knowing that the "how" of your estate planning will truly accomplish your goals — your "why."



Revocable Living Trust

Advantages

- + Privacy of your affairs
- + Avoids probate
- + Avoids guardianship at incapacity
- + Reduced delays in estate administration
- + Selection of person(s) to manage your estate
- + Control timing of inheritance
- + Limit access for spendthrift children
- + Provide for special needs beneficiaries

Disadvantages

- More expensive
- Must be funded
- Additional time to meet with professionals
- Longer period for creditors to make a claim

Will vs. trust: Which is right for you?

When looking to decide whether to choose a will or trust as the base of your estate plan, remember that it is truly a personal choice based on your goals, concerns and interests. Your individual needs and circumstances drive this choice, and while this booklet offers general guidance, benefits and drawbacks of each option, the ultimate choice must be based on a personalized discussion with an experienced estate planning professional.

To achieve your “why,” you will be best served by reviewing your circumstances with a Legacy Assurance Plan network attorney who can expertly guide you as to the “how” — whether a will or trust is better for accomplishing your goals — and then tailor your plan to ensure that you can leave the kind of legacy you have been working toward your entire life.



Comparison of Wills and Trusts

Issue	Will	Trust
Authorized to make health care decisions for each other?	Death only	Incapacity and death
Probate needed?	Yes	No, if fully funded
Effective at incapacity?	No	Yes
Requires funding?	No	Yes
Avoids guardianship?	No	Yes
Private?	No	Yes

Wills, revocable trusts and Medicaid

An estate plan based on a will does not avoid probate. An estate plan based on a revocable living trust avoids probate if it's fully funded. But what if you need to enter a nursing home and qualify for Medicaid? Is there a difference between planning with a will and a revocable trust in that situation? The short answer is no. For Medicaid eligibility purposes, whether you have a will or a revocable trust does not matter since assets owned by a revocable trust are still considered "available assets" for qualification purposes. Both the assets titled in your name and those titled in the name of your trust are subject to Medicaid spend down. However, a comprehensive estate plan often includes other types of trusts and financial planning solutions that provide asset protection, assistance with Medicaid eligibility and preservation of assets from Medicaid estate recovery. Membership in Legacy Assurance Plan provides access to the resources needed to create your comprehensive estate plan.



LEGACY ASSURANCE PLAN IS A MEMBERS-ONLY ESTATE PLANNING SERVICES PROVIDER

At Legacy Assurance Plan, our process begins with educating you on a variety of estate and business planning issues. Our primary focus is to help guide our valued program Members through the planning process by providing them with access to the many resources necessary to help make their goals a reality. But our commitment doesn't end there, because once your plan has been established, we're not only here to help you, we'll also be here to help those you care about later.



Learn more at legacyassuranceplan.com

Call us at **844-445-3422** or email info@legacyassuranceplan.com

Legacy Plan membership provides exclusive access to a group of services, benefits, professionals and providers to assist with the creation of a complete estate plan. A complete estate plan includes legal documents, a financial plan, guidelines to successors, organization of information and periodic reviews and updates, all of which are facilitated by Legacy Plan.

Members receive access to a number of resources needed to create a complete estate plan.

The 3 primary resources are:

1. A qualified estate planning attorney.
2. The estate planning documents needed to achieve your goals and objectives.
3. A lifetime of services and benefits, including estate plan document delivery and notarization, assistance with estate plan funding, beneficiary review and designation assistance, access to a financial professional, periodic plan reviews, replacement legal documents at a nominal cost and an estate settlement consultation with survivors.

Whether your goal is protecting your family the costs, delays, publicity, lack of control and hassles of probate, providing for a disabled child when you no longer can or keeping your business in the family, Legacy Assurance Plan can provide you with the information and resources you need to reach your family's goals.



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