

Will vs. Trust: Deciding which is right for your estate

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With the pandemic bearing down on our communities, more people are recognizing their own

mortality, and with that, the desire to establish an estate plan has come to the fore. A common decision you will face when planning your estate is whether to establish a Will or a Revocable Trust. Both Wills and Revocable Trusts are devices that provide for the distribution of your estate upon your death. While most estate plans do not require a Revocable Trust, there are particular factors that could warrant trust planning. In order to determine whether a Will or a Revocable Trust is right for you, it is first necessary to understand the differences between them.

What a will does

A Will gives instructions to the Personal Representative of your estate as to the distribution of the assets in your probate estate. Your probate estate consists of those assets that, at the time of your death, are held in your name alone and do not have a designated beneficiary. In order for a Will to “speak,” the Will must be probated. Somewhat simplified, probate is a court proceeding in which your Will is proven, your debts are paid, and your property is distributed to

your beneficiaries as directed in your Will. The negative aspects associated with probate are providing a forum for a Will contest in cases of family disharmony, added expense and time required to administer the estate, exposure to creditors, and an increased burden overall on family members.

While a Will does require probate, in many cases, it is not necessary to establish a trust to avoid probate. Will substitutes, such as joint ownership and beneficiary designations, pass your assets to your desired beneficiaries without the necessity of probate. In cases where Will substitutes are not sufficient or desirable, a trust may be necessary. This is particularly true when you have assets held in multiple states that could result in more than one probate being required if a trust is not established.

What a revocable trust does

A Revocable Trust is a written declaration in which you state that you are transferring your property into a trust for your benefit during your lifetime and for the benefit of your beneficiaries after your death. You can amend or revoke this trust at any time, so long as you remain competent to do so.

A Revocable Trust involves three parties: the grantor, the trustee, and the beneficiary.

- The grantor creates the trust and places assets into the trust. There can be more than one grantor of a trust, such as a husband and wife who create a joint trust.

- The trustee holds legal title to the trust property and is responsible for managing and investing the trust property. Often, the grantor will also be the trustee. A successor trustee is named to serve if the grantor becomes incapacitated or passes away.
- The beneficiary receives income or principal from the trust. The grantor is typically the beneficiary until their death.

After a Revocable Trust is established, you can avoid probate upon your passing and ensure that the trust instructions are followed by funding your trust. Funding a trust simply means changing the title of your assets from your name individually to the name of your trust. Assuming you have transferred or beneficiary all of your assets to the trust, when you pass away, there would be no need for probate. Note well, if you establish a Revocable Trust, your attorney will also recommend that you establish a Pour Over Will, which leaves any probate assets to your trust for distribution. This will ensure that if you do not fund your trust during your lifetime, upon your passing, your trust will still carry out your wishes, at least relative to your probate assets.

Thus, if you have beneficiaries who may require ongoing

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protection – such as minors, those with disabilities, or those who have difficulty managing finances - a trust can be used to precisely control how the beneficiary will receive the benefit of your estate. Additionally, for married couples, revocable trusts can be used for estate tax planning if your estate would exceed the estate tax threshold, which is presently \$1 million in Massachusetts.

Get the right advice

As your estate plan should be specific to your situation, only you can decide whether you need a Will or a Revocable Trust, but you need not make that decision alone. Contact an estate planning attorney, who will discuss your particular situation with you and assist you with determining whether a Will or a Revocable Trust is best for you.

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