

How to Choose Between a Living Trust and a Will

Wills and living trusts can both be effective estate planning documents that enable you to direct the transfer of your assets after your death. But how do you know which you need? Read on for more information about how to choose between a will and a living trust.

What is a Will?

A will is a legal document that directs the disposition of your assets after your death. Having a valid will makes the probate process, the distribution of your assets, go more smoothly than if you didn't have a will. Also, in a will, you can name a guardian for your children.

What is a Living Trust?

A living trust is a legal document that becomes valid when you execute the documents and your property is transferred into it. You, as the grantor and trustee, manage the assets while you are alive and then they are passed directly to a trustee of your choice upon your death without involving probate.

Although you can't name a guardian for your children in a living trust, you can choose someone to manage assets set aside for a specific beneficiary until they are older. As discussed below, you can execute a will in conjunction with your living trust, under which you can name a guardian of your children.

What are the Differences Between a Will and a Living Trust?

The main difference between the two documents is that a will takes effect only after your death while a living trust becomes valid as soon as it is duly executed and assets are added—that is, during your lifetime.

Another significant difference between the two is that a living trust can make provisions for your estate in case you are incapacitated. A will can't do this, although a power of attorney can. Living trusts, though, may be more specific and make managing the estate easier on the trustee than a power of attorney.

Moreover, regarding probate, a living trust can help to avoid time and costs associated with it, particularly since with a living trust, there is no freezing of assets so long as the trust has been funded. Another advantage to a living trust is that it remains private in many states, while a will becomes part of the public record during the probate process.

What Factors Should I Consider When Choosing Between a Living Trust and a Will?

Some of the most important factors to consider when deciding on whether you should establish a living trust include, but are not limited to, the following:

- **Your location.** State law regarding estate taxes and probate vary greatly, so what may be advantageous in one state may not be in another.
- **Your assets.** Generally, states establish an asset value below which even wills can bypass probate, but that doesn't mean lower valued estates couldn't benefit from the other advantages of a living trust. Also, if you have assets that could be harmed by prolonged probate, such as a business for example, a living trust might be the better choice.
- **Taxes.** A living trust may have estate tax advantages both on the federal and state levels, but it depends not only on your state and the value of your estate, but also on the federal estate tax, the status of which is currently in limbo.
- **Your beneficiaries.** Because a living trust can hold your assets after your death, it offers a way to provide for young, special needs, or other particular beneficiaries you would rather not immediately receive their share of your estate. You may also provide for the care of pets in this way.
- **Likelihood of your estate being contested.** If you think there is a good chance that your estate distribution will be contested, a living trust may be more likely to withstand the challenge.
- **Your trust in a potential trustee.** With a living trust, you must be able to trust your named trustee to act according to your wishes without court intervention or monitoring.
- **Your current financial situation.** Setting up a living trust may be a little more expensive upfront than writing a will, but a Living Trust will usually be far less expensive to settle and distribute your assets to your heirs.

Final Thoughts on a Living Trust

With a living trust, an asset doesn't become part of it without specifically being included, so you must keep up with adding your assets to the trust to ensure that a valued asset doesn't end up going through probate, especially if it is not included in your will either.

For this reason, it is advisable to also have a pour-over will, not only because you are able to name a guardian for any children, but also because you can catch any assets that didn't make it into the trust. Like all wills, a pour-over will is handled in probate court, if necessary.