



# The Difference Between a Will and a Trust

One of the most common questions we get is “What is the difference between a will and a trust?”. There are a few similarities, but a lot of differences also. In both cases, these documents are a part of your estate plan – to have a complete estate plan, there are also powers of attorney for medical and financial purposes and other documents needed.

Similarities between a will-based plan and a trust-based plan:

- **Exercising Control:** Both a will and a trust allow you to control who gets your assets at your death, how those people/entities get your assets, and who is in charge of making financial decisions at your death. The levels of control do vary with trusts enabling more control.
- **Amendments:** Both wills and revocable trusts are “set in sand”, meaning you can change them provided you have the mental capacity. Both documents are “set in stone” upon your incapacity or your death.

Differences between a will-based plan and a trust-based plan:

- **Probate Avoidance:** A trust will avoid probate if funded properly. A will does NOT avoid probate – it merely tells a probate court where the assets go.
- **Public v. Private:** In most states, probate is costly, time intensive, and most documents are public record. If done properly, trusts will be far easier to administer and can be done privately.
- **Control during your Lifetime:** A trust allows you to control what happens now, if you become incapacitated, and what happens at your death. A will only controls what happens at your death.
- **Cost:** One of the biggest knocks against trusts is that they are supposedly a lot more expensive to set up than wills. This is no longer the case if done correctly.



## Why Do I Need a Will If I Already Have a Trust?

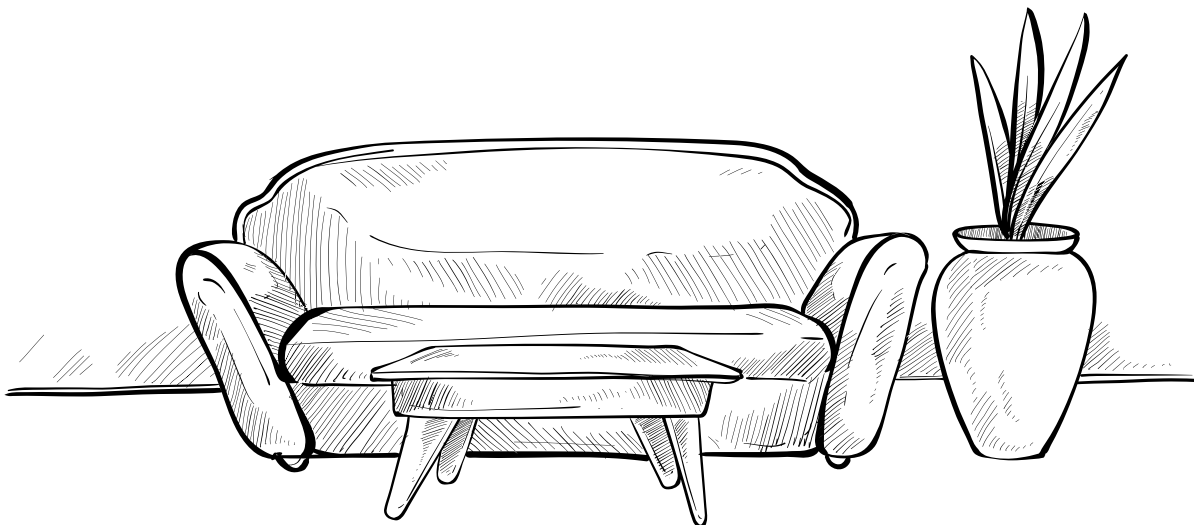
When you have a trust-based estate plan, you also have a will. If you did not put all of your assets into your trust, the will would govern at your death. The beneficiary of your will is your trust – this is what is referred to as a “pour over will” because it pours all of your assets into your trust at your death. Additionally, in a number of states, the will is the primary place where you can name guardians for your minor children.

## What If I Have Named Beneficiaries?

If you have named beneficiaries on assets (life insurance or retirement accounts for example), the beneficiary designation controls! This is why it is important to make sure your beneficiary designations are in line with your estate plan.

## Which One Should I Do?

In most cases, if you are trying to space out distributions for your beneficiary (think minor children), avoid probate, and want to exercise more control, you should consider a trust-based estate plan. If all of your assets are passing by beneficiary designation and there is no reason to hold things back from your adult beneficiaries, a will-based estate plan could be sufficient.





# Guidelines for the Statement of Wishes

A lot of advisors and their clients have been asking for a more comprehensive solution to the typical health care directives, living wills, and powers of attorney for health care that are provided by each state. The documents vary significantly from one state to the next.

There are two schools of thought when it comes to giving specific instructions on these documents:

1. You name the people you know will make the right choice for you and don't feel you will be able to outline every situation. Alternatively, you have communicated certain wishes to the people named on your health care documents. If this is you, STOP HERE! You don't need to fill out this form.

2. You prefer to give more detail on what your wishes would be when you are in place where you cannot speak for yourself.





## END OF LIFE DECISIONS

This section can evoke some strong feelings. Some thoughts that may assist you:

- 1.If there is any reasonable hope of full recovery, you will be kept alive. A medical facility can let you die, but they cannot kill you.
- 2.You should have conversations with your loved ones about your feelings here. If you try to address all scenarios, rest assured that you won't!

### END OF LIFE DECISION:

If you select any of the "Not to Prolong Life" options, this is what is often called "pulling the plug". There are two broad circumstances where this action is considered – (1) When a person is in a state of permanent unconsciousness; and (2) When a person has a terminal condition.

- To Prolong Life – Take all measures to keep your life going under all circumstances.
- Not to Prolong Life – Any Circumstances: If you do NOT want your life prolonged if you are permanently unconscious OR have a terminal condition, select this.
- Not to Prolong Life – Permanently Unconscious: If you do NOT want your life prolonged if you are permanently unconscious, but you would if you have a terminal condition, select this.
- Not to Prolong Life – Terminal Condition: If you do NOT want your life prolonged if you have a terminal condition, but you would if you are permanently unconscious, select this.
- Not to Prolong Life – Other: You may have a different selection here. Please either leave a note or be prepared to address before you sign the documents.

### ARTIFICIAL NUTRITION AND HYDRATION:

Receiving artificial nutrition and hydration can prolong your life. Depending on your wishes, this could be a good thing or a bad thing. You may select wishes on this topic.

### RELIEF FROM PAIN:

You can select to have adequate treatment for pain relief at all times, even if it hastens your death. You can also select other.



## **ANATOMICAL GIFTS AT DEATH:**

To Give the Following Gifts (select all that apply):

You can state what parts of your body, if any, you would like to give. We see most people fall into the following camps:

1. "Take whatever you want – I don't need it anymore" or "I doubt they want any of my stuff, but they can have it" – if this sounds like you, select Organs, Tissues, and all other body parts.
2. "I don't want to be a cadaver on some med student's table" – if this sounds like you, you may select just Organs OR you refuse to make an anatomical gift.
3. "I only want to give " – if this sounds like you, select other and leave a note if you know what you want.
4. "I don't want to be cut up after I'm gone" – if this sounds like you, select that you refuse to make an anatomical gift.

To give those gifts for the following purposes (Select All that apply):

You can state why you would want gifts given. The most common answer is "I don't care what they use them for. I will be gone." If that is the case, click Transplant, Therapy, Research, and Education (OR All of the above). These terms are used in a number of states. Depending on your state, it can have a varying meaning – for example, we have seen "Therapy" defined in 12 different ways by state legislatures.

As far as who can have the anatomical gifts, a number of states do not allow you have a preference. With that said, if you have strong feelings about it, do not hesitate to insert in the attachment.





## **OTHER WISHES:**

### **AUTOPSY:**

The most common answer is that your health care agent(s) or the attending physician can make this decision on your behalf.

### **MENTAL HEALTH TREATMENTS:**

Some examples of mental health treatments include admission to and retention at a mental health facility, psychotropic medications, and electroconvulsive treatment.

The most common answer is that your health care agent(s) or the attending physician can make this decision on your behalf.

### **FUNERAL AND BURIAL:**

First two Options (Burial/Cremation): If you have a preference on cremation and/or burial, but have NOT made prepaid arrangements.

Third Option (Agent Selection): If you do not have a preference on cremation/burial and are comfortable with your agent deciding.

Fourth Option (Prepaid Arrangements made): If you have made prepaid arrangements, let that be known and include those documents with your estate plan.

### **DO NOT RESUSCITATE DIRECTIVE (DNR):**

If you have a formal Do Not Resuscitate Directive (DNR), please state. The documents you are completing here do NOT constitute a DNR. This is something that must be completed with your physician.

### **PHYSICAL HEALTH TREATMENTS:**

Some examples of physical health treatments include CPR, mechanical breathing, major surgery, kidney dialysis, chemotherapy, diagnostic tests, antibiotics, blood products, etc.

The most common answer is that your health care agent(s) or the attending physician can make this decision on your behalf.

## Introduction to Estate Planning

Estate Planning is an essential component to your overall financial plan. It allows you to gain more control over aspects of your life both during your lifetime and after your death. The goal of this document is to prepare you for the questions that will be asked by your financial advisor as it relates to your estate plan.

There are five major decisions that go into each estate plan. Those decisions are described below, along with examples and a description of people in your life that may be up to the task.

1. **Beneficiaries** – This is WHO will get your assets when you pass away. Generally, if you have children, we see to it that things go to your children in equal shares. However, there are also opportunities to leave things to charity (via a specific dollar amount after a death), or to other loved ones.
2. **Method of Distribution** – This is HOW your beneficiaries will get everything when you pass away. Depending on the age and financial capabilities of your beneficiaries, you may wish to delay distributions to a beneficiary. For example, for young beneficiaries, we often see clients give it in stages (1/3 at 25, 1/3 at 30, and 1/3 at 35). Please keep in mind that those young beneficiaries will have immediate access to funds for health care, education, and support. If you have a beneficiary with special health needs, you can leave assets for them through a special needs trust.
3. **Successor Trustee/Executor/Financial Power of Attorney** – This is the person (or people) who will make financial decisions for you in the event you cannot. The type of person who makes a good trustee is someone who is financially responsible, would handle finances similar to you, and is generally a good decision maker. If you don't have a family member or friend who fits the bill, you can consider a professional trustee. Generally, there are 2-3 successors named (in order of preference).
4. **Health Care Power of Attorney** – This is the person (or people) who will make health care decisions for you in the event you cannot. The type of person you name here would need to be able to make decisions during a difficult, emotional time. You will have the ability to state your end of life and organ donation wishes in this document as well. Generally, there are 2-3 successors named (in order of preference).
5. **Guardian (if necessary)** – This is the person (or people) who will have legal custody of any minor children should you pass away. The guardian will work with the trustee to access funds for any minor children. We often see your parents, siblings, or dear friends named here. We also see other children you have that are over the age of 18 named here. Generally, there are 2-3 successors named (in order of preference).



# Basic Estate Planning Checklist

## 1. Inventory your stuff

You may think you don't have enough to justify estate planning. But once you start looking around, you might be surprised by all the tangible and intangible assets you have.

The tangible assets in an estate may include:

- Homes, land or other real estate
- Vehicles including cars, motorcycles or boats
- Collectibles such as coins, art, antiques or trading cards
- Other personal possessions

The intangible assets in an estate may include:

- Checking and savings accounts and certificates of deposit
- Stocks, bonds and mutual funds
- Life insurance policies
- Retirement plans such as workplace 401(k) plans and individual retirement accounts
- Health savings accounts
- Ownership in a business

Once you inventory your tangible and intangible assets, you need to estimate their value. For some assets, outside valuations like these can help:

- Recent appraisals of your home
- Statements from your financial accounts

When you don't have an outside valuation, value the items based on how you expect your heirs will value them. This can help ensure your possessions are distributed equitably among the people you love.





## 2. Account for your family

Once you have a sense of what's in your estate, think about how to protect the assets and your family.

- Do you have enough life insurance? This may be important if you're married and your current lifestyle — and monthly mortgage payment — requires dual incomes. Life insurance may be even more important if you have a child with special-needs child or college tuition bills.
- Name a guardian for your children — and a backup guardian, just in case — when you write your will. This can help sidestep costly family court fights that could drain your estate's assets.
- Document your wishes for your children's care. Don't presume that certain family members will be there or that they share your child-rearing ideas and goals. Don't assume a judge will abide by your wishes if the issue goes to court.

## 3. Establish your directives

A complete estate plan includes important legal directives.

- A **medical care directive**, also known as a living will, spells out your wishes for medical care if you become unable to make those decisions yourself. You can also give a trusted person medical power of attorney for your health care, giving that person the authority to make decisions if you can't. These two documents are sometimes combined into one, known as an advance health care directive.
- A **durable financial power of attorney** allows someone else to manage your financial affairs if you're medically unable to do so. Your designated agent, as directed in the document, can act on your behalf in legal and financial situations when you can't. This includes paying your bills and taxes, as well as accessing and managing your assets.
- A **limited power of attorney** can be useful if the idea of turning over everything to someone else concerns you. This legal document does just what its name says: It imposes limits on the powers of your named representative. For example, you could grant the person the power to sign the documents on your behalf at the closing of a home sale or to sell a specific stock.



# WISE STEWARDSHIP

## FINANCIAL PLANNING

- A **trust** might be also appropriate in some cases. With a living trust, you can designate portions of your estate to go toward certain things while you're alive. If you become ill or incapacitated, your selected trustee can take over. Upon your death, the trust assets transfer to your designated beneficiaries, bypassing probate, which is the court process that may otherwise distribute your property.
- Be careful about who you give power of attorney. They may literally have your financial well-being — and even your life — in their hands. You might want to assign the medical and financial representation to different people, as well as a backup for each in case your primary choice is unavailable when needed.
- **Make final arrangements.** Make your end-of-life wishes known regarding organ and body donation and disposition of your body -- burial or cremation.
- **Letter of Intent.** A letter of intent is simply a document left to your executor or a beneficiary. The purpose is to define what you want done with a particular asset after your death or incapacitation. Some letters of intent also provide funeral details or other special requests. While such a document may not be valid in the eyes of the law, it helps inform a probate judge of your intentions and may help in the distribution of your assets if the will is deemed invalid for some reason.

#### 4. Review your beneficiaries

Your will and other documents may spell out your wishes, they may not be all-inclusive.

- Check your retirement and insurance accounts. Retirement plans and insurance products usually have beneficiary designations that you need to keep track of and update as needed. Those beneficiary designations can outweigh what's in a will.
- Make sure the right people get your stuff. People sometimes forget the beneficiaries they named on policies or accounts established many years ago. If, for example, your ex-spouse is still a beneficiary on your life insurance policy, your current spouse will get the bad news — and none of the policy's payout — after you're gone.
- Don't leave any beneficiary sections blank. In that case, when an account goes through probate, it may be distributed based on the state's rules for who gets the property.
- Name contingent beneficiaries. These backup beneficiaries are critical if your primary beneficiary dies before you do and you forget to update the primary beneficiary designation.



## 5. Note your state's estate tax laws

Estate planning is often a way to minimize estate and inheritance taxes. But most people won't pay those taxes.

- At the federal level, only very large estates are subject to estate taxes. For 2025, up to \$13.99 million of an individual estate (married couples is a combined \$27.98 million) is exempt from federal taxation.
- Some states have estate taxes. They may levy estate tax on estates valued below the federal government's exemption amount. ([See which states have an estate tax here.](#))
- Some states have inheritance taxes. This means that the people who inherit your money may need to pay taxes on it. ([Learn more about inheritance tax here.](#))

## 6. Weigh the value of professional help

Whether you should hire an attorney or estate tax professional to help create your estate plan generally depends on your situation.

- If your estate is small and your wishes are simple, an online or packaged will-writing program may be sufficient for your needs. These programs typically account for [IRS](#) and state-specific requirements and walk you through writing a will using an interview process about your life, finances and bequests. You can even update your homemade will as necessary.
- Wise Stewardship has partnered with EncorEstate Plans to assist with general information as it applies to reviews of existing plans, gathering information needed to provide outside firms in the creation of documents, and updating existing plans for clients.
- If you have questions about the process that require specific legal advice, it might be worthwhile to consult an estate attorney and possibly a tax advisor. They can help you determine if you're on the proper estate planning path, especially if you live in a state with its own estate or inheritance taxes or other related specific estate topics.
- For large and complex estate — think special childcare or special needs concerns, business issues or nonfamilial heirs — an estate attorney and/or tax professional can help maneuver the sometimes complicated implications.



## 7. Plan to reassess

Life changes. So should your estate plan.

- Revisit your estate plan when your circumstances change, for better or for worse. This may include a marriage or divorce, birth of a child, loss of a loved one, getting a new job or being terminated.
- Revisit your estate plan periodically even if your circumstances don't change. Although your situation may be the same, laws may have changed.
- It will take some effort to revise your plan, but take heart. The need to revise means you've already avoided the biggest estate planning mistake: never drafting a plan at all.

## 8. Store your documents

Your attorney-in-fact and/or your executor (the person you choose in your will to administer your property after you die) may need access to the following documents:

- Will
- Trusts
- Insurance Policies
- Real Estate Deeds
- Certificates For Stocks, Bonds, Annuities
- Information On Bank Accounts, Mutual Funds, And Safe Deposit Boxes
- Information On Retirement Plans, 401(K) Accounts, Or IRAs
- Information On Debts: Credit Cards, Mortgages And Loans, Utilities, And Unpaid Taxes
- Information On Funeral Prepayment Plans, And Any Final Arrangements Instructions You Have Made.

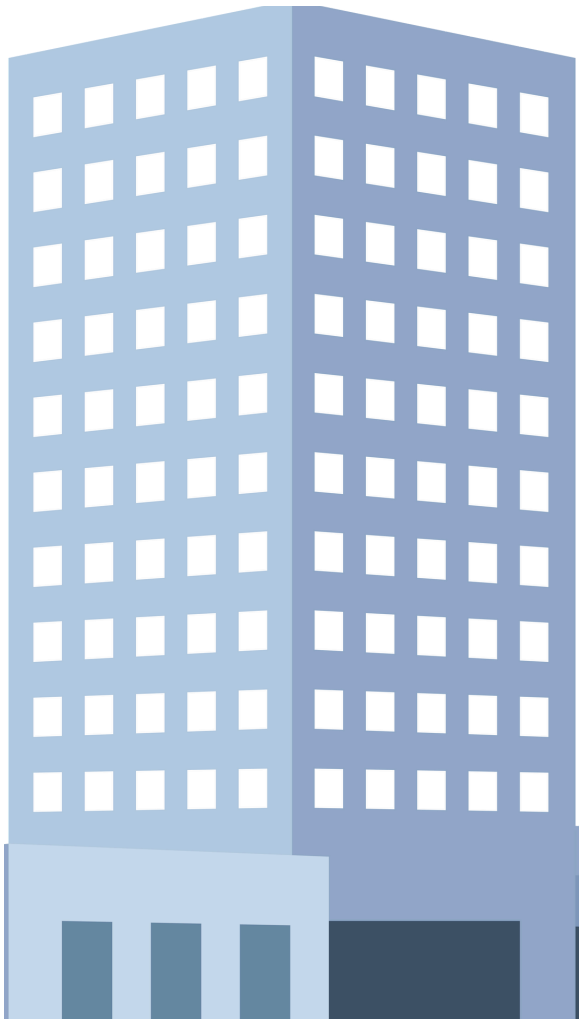
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# What is Probate?

Many of our clients don't know what probate is, and that isn't necessarily a bad thing. If you've never had a loved one die, you may never have experienced it. Probate is the legal process by which a will is validated. If there's no will, it's the legal process of settling a person's affairs.



## How Probate Works

The process, and when it's required, varies by state. In some states (like California), probate is automatic. It involves several steps, including getting a death certificate; identifying an executor or administrator for the estate; identifying assets; paying expenses like debt or taxes; and notifying or paying beneficiaries. If there's a will, the judge also validates the will. (For a will to be valid, it usually has to have witnesses. Sometimes, the witnesses must appear at probate, and sometimes they can sign an affidavit at the same time the will is signed instead.)

When there's a will in place, it usually identifies the executor, assets, and beneficiaries, as well as any outstanding debts and obligations. This can make the probate process much easier. However, it's also possible that someone may contest the will. A child may object if a new spouse is named as executor, for example.



## How Probate Works

How involved the job of an executor is depends on the estate. While the executor may be named in the will, and be someone related to the deceased, an executor may also be a professional or appointed by the court.

It's an executor's job to take stock of the decedent's assets — including any that aren't listed or disclosed in the will. In most cases, this is a simple process, particularly if the deceased individual had an estate plan in place.

The executor is also responsible for taking control of any assets during the probate process, in order to protect those assets, especially if there ends up being any kind of dispute. The executor may be responsible for hiring an appraiser to look at the "death value" of certain assets, though sometimes the court will appoint an appraiser independent of the executor.

In addition to gathering assets, the executor must also notify any creditors that a death has occurred. This includes the bank (if the deceased had a mortgage), but it can also include publishing an obituary so that any unknown creditors have an opportunity to come forward.

Finally, the executor must resolve the estate. This includes paying off debts (and challenging any they view as unfair) and divvying up assets to the beneficiaries. If the will specifies assets go to minors, the executor may be instructed to set up a trust for those assets.

## Who Pays for Probate?

As you can imagine, the probate process can take time to complete, and may require lawyers, court appearances, or both. If this occurs, the legal fees are generally paid from the estate.

The process can go relatively quickly, but it's not uncommon for it to take up to a year. In some cases, immediate family members who are beneficiaries can ask the court to release funds during the probate period. (For instance, you might ask a probate judge to be reimbursed for funeral expenses before the estate is settled.)



## Intestate

If there is no valid will (either because the decedent did not prepare one, or because the court rules the will invalid), the estate is said to be “intestate.”

In this case, any assets left over after debts are paid go to the closest living relative. Who that relative is may vary depending on state law and personal circumstances.

## Avoiding Probate

While having a will can facilitate probate, it doesn't get you out of the process. However, there are some assets that are exempt from probate. For instance, some property passes outside of probate, notably life insurance policies, trusts, jointly owned property, and payable-on-death accounts. (Most retirement accounts fall under this category, too, if you've named a beneficiary.)

If you want to avoid the probate process and protect your financial details from becoming a part of the public record, consider creating an estate plan that includes a trust. There will still be details to take care of to settle your affairs, but those will fall to whomever you named trustee, versus your executor (though many times this is the same person).

We can talk through the details, including what options might make sense for you and your family, when we build your Estate Plan.

Sources: [PolicyGenius](#), [the balance](#), [NOLO](#), [Investopedia](#)

