

WILLS VS. TRUSTS: WHICH IS FOR YOU?

Will (Probate)	Living Trust (No Probate)
Clears title to real estate and property by a public court proceeding (probate); various documents must be filed with the court.	Passes property privately from the trustee to the beneficiaries.
Gives notice to possible creditors (people or companies the deceased person might owe money to) and cuts off their rights if they do not file a claim in the probate proceeding.	No notice to creditors is necessary. Creditors' rights are not "cut off" and they can potentially sue beneficiaries or trustee for debts of the deceased even if they did not know about the debt.
Obtains court approval for passing the title of the deceased person's assets and for any actions of the personal representative in finalizing the decedent's affairs.	No court approval of trustee's actions. Beneficiaries or outside parties may sue the trustee and argue that the distribution of property was wrong. Trustee has no court approval to protect trustee's actions.
Probate filing fee must be paid to the court.	No probate filing fee because proceedings are outside the court. If a dispute arises and a lawsuit is filed, there is a fee for filing the lawsuit.
Law allows personal representative to receive fees for collecting, managing, and distributing property.	Trust can allow or disallow trustee to be paid for collecting, managing, and distributing the property. It is your choice.
Before the beneficiaries can receive their inheritance you must give required notice to creditors, wait for claims, get court approval, file inventory, file accounting, and obtain a court order.	Trustee does work to collect assets, pay off debts, distribute assets, and provide accounting to beneficiaries but does not need to give notice to creditors or file accounting with court.
Attorney fees may be paid to an attorney to handle the probate proceedings.	No attorney fees for probate proceedings but the trustee will likely need an attorney to help with the management and distribution of trust assets to protect trustee against a potential lawsuit for handling the trust incorrectly.
After signing the Will, you do not have to re-title your assets (unless necessary for tax planning situations).	You must change the name on all your assets and accounts (i.e. re-title your assets into your trust) in order to successfully avoid probate proceedings.
Public~probate court proceedings are public. Anyone can look up court records to see what assets you owned at death, what your assets were worth, and who received your estate.	Private~only the trustee, the beneficiaries, an accountant, and an attorney are involved unless a beneficiary or creditor files a lawsuit.

IMPORTANT NOTE: A Living Trust by itself does NOT avoid estate taxes.
Tax saving provisions can be included in either a Living Trust or a Will.

Provided courtesy of:



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