



- assigns one or more trusted individuals to serve as “trustee” (often yourself first, and then when you become incapacitated or die, whoever you named as your successor).
- instructs how your accounts and property should be managed during your incapacity and then devised and gifted upon your death without having to go through the probate process.

What can a Trust do that a Will can't do? Avoid court appointed conservatorship and guardianship.

Wills only become effective when you die, so they are useless in avoiding conservatorship and guardianship proceedings. A Trust allows you to designate your spouse, partner, adult child, or other trusted individual(s) to serve as your trustee to take care of your assets if you become unable to manage your own affairs. If you become incapacitated, your trustee can step in immediately without court intervention, keeping your property under your trustee's control instead of a guardianship judge or a court appointed stranger.

Bypass probate. Property that passes via a Trust doesn't need to go through probate. Property that passes via a Will needs to go through probate first. What is probate? The probate process is designed to wind up your affairs after you die. Your Executor/Personal Representative will work with the probate court, protect your assets, pay your debts, and distribute what remains in accordance with your Will. Probate is public and initiated soon after your death—often while loved ones are still grieving—and it can be costly, laborious, and can sometimes take years to complete.

Wills vs. Trusts

By Carina Lyn Roselli, Esq.

Do you know the difference between Wills and Trusts? Well, the difference between them can make all the difference to your estate plan.

A Will...

- is a written document that declares your after-death wishes.
- is revocable if done properly.
- is considered a “death” document because it only goes into effect when you die (not if you become incapacitated).
- assigns the role of Executor/Personal Representative to whoever you've named to wind up your affairs.
- sends accounts and property owned solely by you through the

probate process and instructs how they should be devised and gifted (excluding accounts and property directed to others through beneficiary designations like life insurance and retirement benefits).

- can appoint long-term guardians for your minor child(ren).

A Trust... (specifically, a Revocable Living Trust)

- is a written document that declares your life and after-death wishes.
- is revocable if done properly.
- is considered a “living” document because it's effective during your lifetime, during any period of incapacity, and after your death.

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Maintain your privacy after death. Trusts are handled privately and without court involvement. Upon your death, your Will must be submitted to your county court and recorded as a public document—including an inventory of your assets and a list of your living heirs. Anyone, including nosy neighbors, financial predators, and unscrupulous “charities” can easily learn such private details if your property passes via a Will. A Trust maintains your privacy and protects your loved ones from those who have made a career out of preying on the grieving.

Keep your child’s inheritance out of court appointed guardianship. A minor who inherits money will require a court-appointed guardian to manage that money until the child receives it all in one lump sum at the not-so-mature age of 18. If you plan for this potentiality, you can build a testamentary Trust (a Trust created by a Will) into your Will, but that Trust would have to go through probate because it is property passing via your Will. Court appointed guardianship and probate could be avoided by creating a non-testamentary Trust for the minor and naming the

Trust as the beneficiary of the policy or account. The Trust will then dictate the terms of distribution as either outright at a certain age, over time at certain “ages and stages,” or even spanning the beneficiary’s lifetime.

Keep your beloved pets out of animal shelters. A Will can bequest your pet to whoever you choose as a gift of personal property, but that will only take effect upon your death, and the pet will have to go through probate first. What happens to them while they wait to be probated? Without proper planning, such as with a pet Trust, your pet could wind up in an animal shelter.

What can a Will do that a Trust can’t do? Name guardians for minor children. A Will names long-term guardians to care for your minor children upon your death (but not upon your incapacity). *Note: While Trusts cannot name long-term guardians for your minor children, other legal documents are available to name short and long-term guardians in the event that you become incapacitated.

Your estate plan must include a Will, but it’s up to you whether your plan includes a Trust as well. Visit <https://clrlaw.pro/legacy-planning/> to learn more about Wills vs. Trusts, and then contact me to get started.

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