

## Do You need A Will or a Trust?

Written by Lucky  
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When it comes to estate planning there are two major vehicles for the distribution of property: A will and a trust. Both are very useful tools and can accomplish specific goals—but how do you know which one is best for your family?

Which document you will need depends on a number of factors, some of which may seem completely irrelevant at first: the size of your estate, your goals for that estate, the age of your children, your marital status, your retirement account, and many, many more. But the first step to understanding which tool may be right for you is to understand what each document does.

**A Will:** A will is a formal declaration of your wishes. It is a document you create to declare the extent of your privately held property (it does not cover jointly owned property) and what your wishes are for the distribution of that property. You name an executor to carry out your wishes, and you can even include a nomination of guardian for young children in your will. A will does not go into effect until after you die; before then it is simply a piece of paper containing your private wishes. However, once you have passed away your will no longer remains private, it now becomes a matter of public record, available to anybody who would like to view it, and overseen by the court in a sometimes lengthy and expensive process called probate (<http://jesranilaw.com/blog/93-what-is-probate>).

**A Trust:** A trust is a far more extensive tool than a will, primarily because a trust avoids probate whereas a will does not. In fact, there are many different kinds of trusts, each of which may be used for specific situations. Most trusts created for estate planning purposes are revocable living trusts (or RLTs.) An RLT is a document created not simply to distribute your property, but to own your property on your behalf, to be invested and spent for your benefit or the benefit of your named beneficiaries.

As such, a trust takes effect as soon as you sign it and your property is protected by and subjected to the trust parameters as soon as you place them in the name of your trust. There is a lot of flexibility available with a trust, and yours can be created to fit your unique situation. Most RLTs name the trust creators as the initial trustees, nominating individuals or banks to take over as trustee when the creator becomes incapacitated or passes away. Meaning with a trust *probate is avoided*....unlike a will, which does not avoid probate.

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The other benefit of a trust is that when the creator passes away, property is not merely distributed and that's the end of it; the creator can instruct the trustee to distribute the money slowly and in any number of ways, even to the extent of creating new trusts for each beneficiary. Trusts can last for generations, as evidenced by the enduring Kennedy trusts.

Wills and trusts are necessary tools in estate planning, each one working in unique situations. Call [our office](#) and we can help to ensure that you select the best Estate Planning tool for your family. It is important to turn to attorney to ensure the documents are prepared pursuant to all applicable laws, as if they are drafted incorrectly the documents could be determined as void.