

Where There's a Will — or a Trust — There's a Way: A Practical Guide to Choosing the Right Estate Plan

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Should you have a revocable trust or a simple will? As an Estates & Trusts attorney, this is one of the most common estate-planning questions I hear. For most Maryland residents, a simple will is perfectly adequate. A will directs how your assets will be distributed, names the person responsible for administering your estate, and allows you to designate guardians for minor children. Although a will does not avoid probate, Maryland's probate process is generally efficient and straightforward, and it provides a clear forum for resolving disputes if they arise.

But some of us have more complicated assets or circumstances. For example, you may be older and want someone to manage your finances in case you lose capacity. Or you might own a vacation home outside Maryland. In situations like these, a revocable trust can make it easier for someone you trust to take charge of your finances if the need arises, while streamlining the transfer of assets upon your death.

Sometimes called a "living trust," a revocable trust is established during your lifetime. Once the trust agreement has been signed, you should then follow your attorney's instructions for transferring your assets into the trust.

- **Real Estate.** This typically involves recording a new deed — something your attorney or title company can handle.
- **Bank Accounts.** Checking and savings accounts can be retitled by taking a copy of the trust (or a shortened form, called a "Trust Certification") to the bank. This is typically done by renaming the account from you individually, to you as the trustee of your revocable trust.
- **Retirement Accounts & Life Insurance.** These can be set up to transfer to the trust upon your death by completing a beneficiary-designation form naming the trustee as the beneficiary. Alternatively, it may be more advisable to name one or more family members as direct beneficiaries. Because either approach can have significant tax implications, be sure to consult your attorney before making changes.

The benefit of all this legwork comes upon your death. The trust assets, called the "trust estate," will transfer to your beneficiaries without unnecessary delay. If you do own property outside Maryland, it will transfer without the need for "ancillary probate," essentially a second estate to be administered in the state where the other property is located.

Key Advantages of a Revocable Trust

Beyond avoiding ancillary probate, a revocable trust offers several additional advantages that may make it the better choice in the right circumstances.

Incapacity Planning

A will takes effect only upon death. By contrast, a revocable trust can provide for the management of your assets if you become incapacitated during your lifetime. If this happens, your chosen successor trustee can step in and manage trust assets without the need for court-appointed guardianship, which can be time-consuming, stressful, and costly.

Privacy

Unlike a will, which becomes part of the public record once it is filed with the Orphans' Court, a revocable trust generally remains private. For individuals who value confidentiality, particularly those with strained family dynamics or complex financial holdings, this can be an important consideration.

Continuity and Efficiency

Because the trust holds title to the assets, there is no interruption in ownership at death. This continuity can simplify administration for your beneficiaries and reduce delays in distributing property, particularly when compared to even a streamlined probate process.

Myths About Revocable Trusts

Despite their advantages, revocable trusts are sometimes misunderstood. It is worth addressing a few common misconceptions:

“A trust avoids all probate.”

Not necessarily. Only assets that are properly titled in the name of the trust — or that pass by beneficiary designation or joint ownership — will avoid probate. Any assets left outside the trust may still require probate administration, which is why proper funding of the trust is essential.

“A trust replaces a will.”

Not entirely. Even if you have a revocable trust, you will still need a will, often called a “pour-over will.” This document serves as a failsafe and ensures that any assets inadvertently left out of the trust are directed into it upon your death. A pour-over will can also name guardians for any minor children and address other important matters not normally included in a trust.

“A trust avoids taxes.”

For most individuals, a revocable trust does not provide income- or estate-tax savings during your lifetime because you retain control over the assets. Tax planning typically requires additional strategies beyond a basic revocable trust.

When a Will May Be the Better Choice

While revocable trusts are powerful tools, they are not always necessary. Here is when a simple will may be all you need:

- Your assets are relatively straightforward
- You own property in only one state
- You have designated beneficiaries on retirement accounts, life insurance, and payable-on-death accounts
- You are comfortable with Maryland's probate process

A will is generally less expensive to set up and maintain than a trust, and it requires less administrative effort during your lifetime. For many families, it strikes the right balance between simplicity and effectiveness.

The Importance of Proper Planning

Whether you choose a will or revocable trust, it's essential that you have an estate plan in place and keep it up to date. Changes in family circumstances, financial holdings, or the law may require updates over time.

It is also essential that you coordinate your estate planning documents with your beneficiary designations and asset

ownership. Missing or out-of-date beneficiary designations on retirement accounts or life insurance policies may derail an otherwise well-thought-out estate plan.

Will vs. Trust: Which Is Right for You?

There is no one-size-fits-all answer. The right approach depends on your assets, family dynamics, and personal preferences. For some Maryland residents, a will provides all the structure they need. For others, particularly those with multi-state property, concerns about incapacity, or a desire for privacy, a revocable trust offers significant advantages.

Final Thoughts

Estate planning is ultimately about making things easier for the people you care about most. Whether through a will or a revocable trust, the goal remains the same: to provide clarity, reduce stress, and ensure that your wishes are carried out efficiently.

By understanding the differences between these planning tools, and by working with an experienced estates & trusts attorney, you can create a plan tailored to your needs and mindful of your legacy.