

WILLS vs. REVOCABLE LIVING TRUSTS

Issue	Will	Revocable Living Trust
During Life:		
Cost to implement:	Modest: A Will is generally less costly than a Trust; can be nearly as expensive with complex planning elements. Cost includes other legal documents such as Durable General Power of Attorney and Advance Medical Directive (“Living Will”).	Greater: To prepare both a Will and a Trust; to transfer all assets to that Trust; and to educate the Grantor about Trust management. Cost includes other legal documents (same as for a Will) and costs of Deed preparation and filing.
Cost to administer:	Nothing to administer until death unless court proceeding for appointment of a guardian/conservator is needed due to disability; significant court and legal fees.	Usually little more than if property held individually.
Lifetime asset management:	None--Will effective only at death. Asset management during lifetime is generally accomplished by use of a Durable General Power of Attorney [DGPOA] (much better than having no plan; not as robust as a Trust).	Trust can include asset management upon disability and avoidance of appointment of guardian/conservator for personal and property management.
Effectiveness upon disability:	None-- Will effective only at death. DGPOA offers some relief from seeking court appointment of a guardian/conservator.	Probate guardianship is avoided. The Trustee you picked for just such an event as your disability will manage your financial affairs according to your instructions for as long as necessary.
Ability to change the terms:	Easy, by executing a new Will or a codicil.	Easy, by executing an Amendment to the Trust.
Income tax advantages:	None; comparable to Trust in that regard.	None - All income tax attributes flow through the Trust and are reported by Grantor, as if the Trust didn’t exist.
Major Concerns During Life:	Ensuring that Will is updated as life circumstances warrant.	Property acquired after Trust created and never transferred to Trust, requiring a probate proceeding just for that asset.

Issue	Will	Revocable Living Trust
At Death:		
Necessity of probate proceeding:	Requires probate proceeding for Will to take effect and property to pass according to its terms. Executor appointed in Will must be formally appointed by Court.	Takes effect at death without necessity of probate proceeding for all property held by Trust. May need limited probate for non-Trust property using “pour-over” Will. Trustee automatically steps in.
Real Property in another State:	Requires “ancillary” probate proceeding in that state to clear title. May be significant cost.	No ancillary probate proceeding required for any property held by Trust.
Expenses at death:	Can be large if probate necessary, especially in state providing substantial professional commissions and fees. In Virginia probate fees are not large and probate is not complicated.	In some jurisdictions, less, due to avoidance of probate. However, in Virginia there is generally little difference from the cost of using a Will alone except costs related to longer administration.
Privacy:	Contents of Will are public.	Trust administration is private, although beneficiaries are usually entitled to information.
Disgruntled Heirs & Beneficiaries’ Potential for Contest:	Will’s terms are public, and a Will contest is relatively easy to file following initiation of probate proceeding.	Some beneficiaries are entitled to full disclosure of Trust’s terms. Statutes of Limitations for filing claims vary from state to state.
Income tax advantages:	Comparable – Both a probate estate and a Trust are separate taxpayers for income tax purposes.	Comparable – Both a probate estate and a Trust are separate taxpayers for income tax purposes.
Estate (“Death”) tax advantages:	Comparable; can be planned for in Will	Comparable – Trust is “invisible” for estate tax purposes. Trust can include tax planning.
Delays following death:	Some time necessary to initiate probate proceeding. This time period is generally 2 weeks to 2 months. Probate can take 6 months to several years depending on complexity.	No interaction with Court necessary, so delays and deadlines due to Court aren’t relevant.

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At Death (continued):		
Interruptions resulting from death:	Interruptions possible due to delays in opening a probate estate (e.g. obtaining ongoing funds, running a business).	No interaction with Court necessary; may incur some delay as successor Trustee may need to establish authority with banks, brokers, etc. to have access to funds to pay bills or to operate a business.
Causes of action by or against a Decedent:	Can be brought or defended only by an Executor.	Decedent's Trustee lacks comparable authority; Executor under Will can bring action but limited probate required.
Court Accountings:	Detailed annual accountings are generally necessary in Virginia, with fees payable to the Commissioner of Accounts in addition to any professional fees.	No Court accounting necessary.
Costs:	Probate taxes; court costs/Commissioner fees; legal fees; tax/accounting fees; Executor/Administrator commission. If a testamentary Trust is established in a Will, that Trust remains under court supervision until termination. Continuing legal and court fees, as well as Trustee commissions/professional fees until the funds are distributed/Trust ends.	Generally no court costs; attorney and other professional fees as needed to help Trustee understand the Trust and change the titles of your assets for distribution. Administrative costs and Trustee commissions/professional fees for any continuing Trusts.
The Bottom Line:	<i>A Will can accomplish your goals if done correctly and updated as needed. Lower initial costs but likely more costly in the long run, particularly if continuing testamentary Trusts are part of the estate plan.</i>	<i>A Living Trust is revocable until death and can easily be amended as circumstances change. Generally offers more flexibility in administration than a Will and offers lifetime management feature not available in a Will. Higher initial cost likely offset by lower overall costs of administration.</i>