Wills vs. Trusts

Wills and trusts are both useful estate planning tools. Each has advantages and disadvantages. Determining which is right for you depends on your goals and circumstances.

Let's define each then we can compare the two side by side.

What Is a Will?

A will (also called Last Will and Testament) is a written legal document that is signed and witnessed. You, the testator, direct how you want your assets to be distributed after your death. In your will, you name an executor who will be responsible for finalizing your estate in accordance with your wishes and the law. A will allows you to name beneficiaries and make bequests (i.e. who gets your stuff), appoint guardians for minor children and choose someone to manage property left to minor children.

After your death, your will is filed with the court and this begins the probate process. The court will determine the validity of the will and appoint the executor. The executor is responsible for publishing a Notice to Creditors and providing an inventory of assets to the court. When all debts are paid, the executor will distribute remaining assets according to the terms of the will. This process can take anywhere from a few months to a year or more and can be very complex. Because of the important duties of the executor, most courts in Texas require that the executor is represented by an attorney.

What Is a Trust?

The definition for a trust is the legal relationship created when one person (the "grantor") places assets under the control of another person (the "trustee") for the benefit of some other person or people (the "beneficiaries") or for a specified purpose.

In layman's terms, a trust is created by the **grantor** (that's you). The grantor writes the rules governing how the trust is to operate, what it is to do, and how and when to do it. If the trust is revocable, you can change the rules at any time. If the trust is irrevocable, you can't. (Each form has advantages and disadvantages, including tax implications.)

When creating the trust, you appoint a **trustee**, who will have the job of managing the trust and its assets. (People often appoint themselves to serve as trustee.)
[source: http://www.edelmanfinancial.com/]

A trust does cost more to set up and requires management after it is created. For the trust to be effective, it must be funded, meaning assets must be placed into it. Assets in the trust are not subject to the probate process.

Here is a side by side comparison:

	Will	Trust
When is this effective?	A will is effective upon death of the maker (testator). It can be revoked or changed at any time prior to death as long as the maker has mental capacity.	The trust becomes effective upon execution. Assets are transferred to the trust. The trust becomes the legal title owner. This process is called "funding".
What is the method for distribution?	The will must be filed with the court to determine validity. This begins the probate process. Assets covered under the will are distributed after debts are paid and inventory is completed. Real estate in another state may require a separate probate.	Distribution is defined by terms of the trust. The terms are dictated by the maker of the trust (grantor). Assets in trust are not subject to the probate process regardless of location.
Who's in charge?	The executor is responsible for legally administering the estate. They ensure that all debts are paid and assets distributed according to the wishes of the deceased.	The trustee manages the assets and terms of the trust and the distribution of the assets. You can be the trustee of your own trust and name a successor trustee in the event you are unable to act in the trustee capacity.
Other than my loved ones, who knows about my estate?	Once the will is filed with the court, it becomes public record. Additionally, the executor is required to publish a Notice to the Creditors and file an inventory of the estate assets	A trust is not filed with the court and remains private. No inventory of assets or Notice to Creditors is required.
What happens if I become disabled or incapacitated?	If you become disabled or incapacitated, a power of attorney allows you to choose who makes decisions for you. Otherwise, the court may need to appoint a guardian. A new will cannot be executed by a guardian.	Management of the trust transfers to a successor trustee if you become disabled or incapacitated.

Would I need additional documents if I become disabled or incapacitated?	There is no provision for disability in a will. You will need separate documents for powers of attorney, health care directives, etc.	The successor trustee manages the assets that are in the trust. Separate documents (powers of attorney, health care directives, etc.) are needed for anything not included in the trust.
Can I name a guardian for my minor children?	You can nominate a guardian for minor children in a will.	You can nominate a guardian for minor children in a trust, however it is recommended that you do this in a separate document.
Can I give certain things to certain people and dictate the terms of the bequest?	You may designate beneficiaries for specific items, but more detailed instructions may be required in your will.	The grantor has greater control of terms of distribution such as beneficiaries, amount, method, timing, and parameters.
How much time and money will it take to set up?	A will is less expensive and requires less effort to prepare. Probate expenses add to the cost later. Any changes require a new will and execution.	There is more expense and effort to prepare a trust now, but it is generally less work and cost later. Changes only require an amendment to the trust.

When considering estate planning and what is right for you, it best to seek the advice of an estate planning attorney. Through their guidance and expertise, you can set up a plan that will accomplish your goals.