



Trust-Based Estate Plans vs Will-Based Estate Plans: Deciding Factors Your Clients Should Consider

Business owners should pay careful attention to Control, Privacy, and Continuity of Business Affairs.

Estate Planning Considerations:

- **Control:** Who gets it, How they get it, Financial/Medical Decisions, and Guardianship... a Trust-Based Estate Plan is the most effective estate planning tool for those who wish to have control after death.
- **Cost:** For most clients, the final cost of a Trust-Based Estate Plan (TBEP) is considerably less than the final costs, fees, commissions, and expenses of a Will-Based Estate Plan (WBEP).
- **Privacy:** A TBEP provides privacy. A WBEP allows the availability of personal information and affairs to the public. For business owners or those with alternative beneficiary designations, this could be of significant interest. Consider that an estate may need to sell assets to cover taxes, debts, or monthly expenses.
 - With a WBEP, filings regarding the estate's assets and the business's financial affairs must be completed. Anyone looking to purchase property from the estate would have access to this information. This may result in a much lower offer where the intended buyer is also more likely to be savvy to this information being available.
 - Beneficiaries are more likely to contest a Will than a Trust. Despite the longer period given to contest the Trust, the number of those contested remains lower, significantly lower, than a Will-Based Estate Plan.
- **Time:** The average time to close a Trust-Based Estate is significantly shorter than the delays and time to close a Will-Based Estate.
- **Ancillary Administration:** A Trust-Based Estate will never incur the expenses and delays a Will-Based Estate does regarding decedents with out-of-state/foreign real property.

- **Creditor Protection:** Neither a TBEP nor a WBEP has significant creditor protection.
- **Continuity of Business Affairs:** For business owners, the benefits of a TBEP far outweigh a WBEP. The day-to-day running of the operational business should not be disrupted. Again, a TBEP is the best method in which to ensure this.
- **Non-Resident Fiduciary:** for those naming a non-resident fiduciary (out-of-state friend or relative serving as Trustee/Executor/Power of Attorney), a TBEP is the best fit.
- **The Living Trust must be Funded:** The requirement (best practice) to fully fund the TBEP might reveal issues regarding ownership/title of the property that would otherwise go unnoticed in a WBEP.
- **Continue Gifting:** A TBEP provides more assurances that the decedent's wish regarding charitable gifting will continue. There are very few options for someone to impede this in a TBEP.
- **Federal Estate Tax Planning:** A TBEP provides more opportunities to plan for federal estate taxes. Particularly if a client owns Joint Property, Life insurance, TOD/POD accounts, or has assets in a QRP or IRA. Or if they might exceed the FET exemption amounts.