



New York Estate Planning Basics

Determining What Tool Is Best for Your Needs

Simple Will v Living Trust

And Other Points to Consider

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What is a Will?

A will is a document, usually drawn up by an attorney, where you are able to determine what will happen with your assets after you die. It goes into effect only after you pass away. A will must be probated through the Courts and becomes a public document. The fiduciary must report and account to the Court and the Court has final authority of oversight.

What is a Living Trust?

A living trust is a private document that goes into effect as soon as you sign it. Through a trust you transfer ownership of your property, real and personal, as you desire, to the Trust at the time of formation. Because ownership has been transferred before your death, the trust, your assets and estate plan remain private.

If you have no Estate Planning Tool at the time of your death, NYS law has default rules of intestacy that designate who your heirs are and how they will inherit. These rules are meant to reflect what the Average New Yorker would desire. Generally speaking, an intestate estate will be divided between a decedent's closest family members. For example, if someone passes away with only a spouse, then all of the assets of that person will transfer to his or her spouse. But if someone passes away with a spouse and children, the assets will be divided between the spouse (50%) and the children (50% in total, regardless of number of children), with some other caveats. For many people, not having an estate tool is not detrimental, but for most people, an estate plan will best allow for your property to be inherited the way you desire.

Special Circumstances

We recommend an Estate Planning Tool for people with special circumstances. These life situations are not always provided for in the current laws as you may wish and the effects can be devastating to persons whose interests are not properly protected. Persons you may need to consider include, but are not limited to: Business partners, Unmarried domestic partners, step children, step parents, ex-spouses, underage children, or parents, spouses or children with a legal disability.

Comparison: Will v. Revocable Trust

	<u>Will</u>	<u>Trust</u>
Pros not allowed by the other	Can name a guardian for minor children; Retain true ownership of all property.	Allows for disability planning; Could save money on certain taxes; Remains a Private document Reduces need for probate.
When does it become active?	Upon your demise	Immediately upon signing.
Cost	Although the drafting fees are similar, the probate process can be costly and timely.	Can save attorney and court fees, as the document names the trustees and does not require approval of the court. There may be up front fees associated with transferring title to certain real property or titled personal property.
Asset Ownership	A will does not affect your ownership during your lifetime. However, as you add or remove property, your will may need to be updated.	For the trust to be in effect, any included property must change title and ownership into the trust. You can still remain in control, but the trust will be the legal owner of any included property.
Medicaid Protection	None.	Provides for protection of invasion of assets after five (5) years. May also protect assets from other creditors during your lifetime.
Ease of Change	Although codicils are allowed, most attorneys will recommend a completely new will if you need to change particular terms.	Simple Amendments are easily created and appended to the original Trust Agreement.
After death	Provide for those you wish; Can include a trust for special distribution after your death.	Can name successor trustees to continue trust ownership and management or it can terminate upon death and assets distributed immediately.

Other Planning Tools to Consider

In addition to a will or a trust, there are other tools and precautions we recommend depending on your particular life circumstances. These include, but are not limited to a Statement of Funeral Wishes, List of Assets, Compilation of Accounts and Passwords, Power of Attorney, Health Care Proxy, Living Will, Mirror Wills, Present transfers, and Irrevocable Trust.

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