Will vs. Trust: Which Estate Planning Option Is Right for You in New York?

By Carson M. Hearst

June 29, 2026 | **TRUSTS AND ESTATES**

One of the most common questions we hear from clients is whether they need a revocable living trust to avoid probate or whether a last will and testament ("Will") is sufficient. The answer to that question is that it depends on your circumstances. In upstate New York, a straightforward Will-based estate plan works well for most people with basic estate planning needs. A revocable living trust is a powerful tool in certain situations, but it is not always necessary to incur the extra expense and time associated with creating a Trust-based plan. This article will help you understand the key differences between the two approaches so you can have a more productive conversation with your estate planning attorney about which plan is right for you.

What a Will-Based Plan Does

A Will is a written document that states how you want your property distributed after you pass away. It names an executor, who is the person responsible for taking charge and "playing quarterback" for your estate. An executor is also the person responsible for carrying out the terms of the Will. A Will can also designate guardians for minor

children. In New York, a Will must be admitted to probate in Surrogate's Court before your executor can generally act. Probating the Will means the court has given the Will legal effect.

A Will-based plan generally involves lower estate planning costs than a trust-based plan, and is simpler to maintain because you do not need to retitle assets during your lifetime. For the majority of straightforward estates in New York, a Will-based plan is appropriate and recommended. A Will can also include some in-depth provisions when needed, such as testamentary trusts, estate tax planning, trusts for minor beneficiaries, and other tailored terms.

The primary drawback of a Will-based plan is that the Will must go through the probate process, which takes some time and involves court fees and oversight. However, if you live outside of major metropolitan counties, the Surrogate's Courts are generally timely, and the time to get the Will probated (when the proper documentation is submitted) can be a matter of days and usually at most up to a week or two. Once admitted to probate, a Will becomes a public record in the court system. Additionally, all "distributees" must be identified, located, and served with notice before probate can proceed. Distributees are the family members who would inherit under New York law if you had no Will. Typically, these people are your spouse, children, parents, or siblings, depending on your family situation. If any distributees are difficult to locate, probate can be delayed while search efforts are undertaken.

What a Revocable Living Trust-Based Plan Does

A revocable living trust is a legal contract between you and your appointed trustee that you create during your lifetime. You must "fund" the Trust by transferring ownership of your assets into the trust. This typically includes things like your house, personal property, etc. You typically appoint yourself to serve as the initial trustee, which means you maintain full control

of your assets. You can amend or revoke the trust at any time. When you pass away, your successor trustee can administer and distribute trust assets according to the terms of the trust without going through probate (i.e., no court involvement). This allows the trust to avoid probate entirely for properly funded assets.

The advantages of a trust-based plan are relevant in certain situations. Because assets that have been properly transferred to the trust do not pass through probate, distribution to beneficiaries can happen more quickly. The terms of your distributions also remain private because, unlike a probated Will, a trust generally does not become part of the public court records. A trust also provides continuity of asset management if you become incapacitated, because your successor trustee can step in without court involvement. For those who live in areas with busy Surrogate's Courts, particularly in New York City and Long Island, a trust can also help avoid the delays associated with those courts. Finally, if you own real estate in more than one state, a trust avoids the need for ancillary probate in each of those states.

However, a trust-based plan comes with significant drawbacks and costs that should be carefully considered. A revocable living trust carries higher fees and is more time-consuming to prepare than a basic Will. Funding the trust during your lifetime usually entails steps such as retitling bank accounts, real estate, personal property, investment accounts, and other assets into the name of the trust. If you skip this step, the trust does not avoid probate for those assets because they have not been properly transferred. Any assets left outside the trust at the time of your death will still pass through probate, which means you may need to open an estate proceeding anyway. Certain assets, such as retirement accounts, require special planning and cannot simply be retitled into a trust without potential tax

consequences. Ongoing maintenance is also required as you acquire or sell assets over time to ensure that new assets are properly titled to the trust.

The Pour-Over Will: An Important Catch-All

If you have a revocable living trust, your attorney may also suggest creating a “pour-over will.” This type of Will directs that any assets not already in your trust be transferred (“poured over”) into the trust at your death. It acts as a safety net to catch anything that was inadvertently left outside the trust. However, it is important to understand that assets passing under a pour-over Will are still probate assets, so they must go through Surrogate’s Court like any other Will. The pour-over Will does not eliminate the need for probate; it ensures those assets ultimately end up getting transferred to the trust so that they can be managed according to your trust’s terms.

When a Trust May Be Worth Considering

While a Will-based plan is often sufficient, there are specific circumstances in addition to those mentioned above where a revocable living trust becomes particularly useful. If you are disinheriting a distributee or your distributees are remote enough that you never intended to benefit them upon your death, a trust avoids a disinherited heir a forum to challenge the validity of the Will and therefore the intended disposition of your estate assets. A trust also keeps the terms of distribution out of the public probate record, which can keep such decisions private and less subject to scrutiny. While trusts can still be challenged, they may present additional hurdles for a contestant compared to a standard Will probate proceeding. Another reason you may want to consider a trust is if your distributees are hard to find. Whether they live outside the county, out of state, in another country, or their whereabouts are unknown, a funded trust avoids the probate requirement of locating each distributee and obtaining jurisdiction over them by service of process (like a Summons) or otherwise requesting their consent, which can otherwise cause significant delays.

Beyond these situations, a trust may also be worth considering if you own real estate in multiple states and want to avoid opening a separate probate proceeding in each one. Individuals with complex assets or beneficiary needs, such as minor beneficiaries, beneficiaries who need special care, such as through a special needs trust, or financial management assistance, or complex investment holdings, may also benefit from the more structured and efficient administration that a trust provides.

Revocable Living Trusts Do Not Protect Assets

There is a common misconception that a revocable living trust “protects your assets” during your lifetime. It generally does not. Most revocable trusts provide that you, as the Grantor, retain the ability to receive all income and principal during your lifetime, as well as the power to amend and revoke the trust assets. As such, those assets are still considered available for creditors and will be deemed as an available resource if you seek Medicaid eligibility. This is an important consideration in elder law planning. There are other types of trusts that can assist with such asset protection planning, as well as lifetime estate tax planning.

In regards to estate taxes, it is important to understand that tax-planning provisions can be incorporated into either a Will or a trust. A revocable trust alone does not reduce your estate tax liability. For reference, the 2026 New York estate tax exclusion amount is $7,350,000, and the federal estate tax exclusion is $15,000,000. These figures change periodically and should be confirmed with your attorney at the time of planning.

Conclusion

There is no one-size-fits-all estate plan. For many people, a well-drafted Will, combined with appropriate advanced directive documents such as a healthcare proxy, living will, and power of attorney, is a complete and effective comprehensive estate plan. A revocable living trust adds value in specific circumstances, but it also adds cost, complexity, and ongoing responsibility. The right choice depends on your family situation, your assets, where you live, and your goals. We suggest that you discuss your individual circumstances with an experienced estate planning attorney who can help you determine which approach makes the most sense for you and your family. If you have questions for a member of Lippes Mathias' trusts & estates practice team, contact practice team leader David E. Siegfeld at dsiegfeld@lippes.com.

Related Team

Carson M. Hearst
Associate

David E. Siegfeld
Partner | Team Leader - Trusts & Estates