

## The difference between wills and trusts

Knowing the difference between these two planning tools is the key to a successful estate plan



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**Q:** What's the difference between a will and a living trust?

— *Marisa*

**A:** It's important to understand the difference between living trusts and wills if you hope to do any type of successful estate planning. First, the similarities. Living trusts and wills are both legal documents written to deal with property and both are important estate planning tools that can sometimes even be used together.

Living trusts appoint trustees to manage property. Trustees control property while you are alive. They can even manage trust assets if you are incapable and can distribute trust property when you die. In this way living trusts can be will substitutes.

Wills appoint executors who manage and distribute property when someone dies. But until someone dies, executors have no power to control property. So what if anyone becomes incapable of managing things themselves? They would need an attorney set up as a power of attorney to manage their property. This power of attorney is done in addition to a will.

Those are the basic differences but you need to know more.

### Advantages and Disadvantages of Living Trusts

Persons who set up living trusts are called **settlers**. They settle or transfer assets into a trust using written documents. Trustees manage trust property. They can distribute trust property/assets when the settler dies.

Living trusts have advantages:

- Settlers can transfer valuable property like a business into a trust. The trust assets can be managed by trustees if the settler becomes incapable.
- When the settler dies, other trustees can take over. They can then distribute trust assets without a will. Trust assets are not subject to the costs and delay of probate.
- Unless the trust is contested, information about the trust assets remains private. Wills, on the other hand, become public when they are probated.

Disadvantages of trust include high costs for legal and tax advice with annual tax filings. A cost benefit analysis is also required because benefits may surpass costs to prepare trust documents and transfer assets into the trust.

Canadians can transfer title to a family vacation property into living trusts. This transfer can be done tax-free and avoids probate.

If you have a living trust do you still need a will?

## Everyone Needs A Will

Not all assets can be transferred into a trust. There are costs and tax consequences involved in transferring legal ownership of property into trusts.

Even if a living trust is created, everyone benefits by having wills and executors. Once someone dies, wills normally are confirmed in estate court. Wills then become public documents with loss of privacy.

## Are Testamentary Trusts Different?

Living or *inter vivos* trusts are created when a person is alive. Testamentary trusts are created by wills. These trusts are less expensive to set up in your will.

Living trusts are more commonly used in the United States where costly living trusts are needed because of complex estate tax laws. That is why American estate planning is different from Canadian estate planning.

## Testamentary Trusts

Testamentary trusts can also be created by a will. Typically, testamentary trusts are used to protect minor children, spendthrift beneficiaries or to manage property for spousal partners and are less expensive to set up.

Finally, preparing a will is less expensive and easier to change than a living trust.

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