

COMPARISON OF “CORE” ESTATE PLANNING OPTIONS

	No Will	Will	Living Trust
If you become disabled	Probate court appoints guardian who reports to court on an annual basis. The court controls your finances and assets.	Same as if you had no Will because a Will does not have any legal weight until the day you die.	Probate guardianship is avoided. The trustee you picked for just such an event as your disability will manage your financial affairs according to your instructions for as long as necessary.
Cost	Court costs and attorney fees.		Trustee fees, if the trustee (often your family) decides to accept them.
When you die	Probate court oversees State statutes, which controls the amount and to whom your assets are distributed (including your creditors.) Documents must be filed with the court. Therefore, no planning is a plan.	Probate court oversees the process to assure that your debts are paid and your assets are distributed according to your Will. Documents must be filed with the court.	If your trust is fully funded, only one document goes through Probate (the pour-over Will). This simple document tells the court that your trustee is overseeing the process. Your trustee may distribute your assets according to the terms of your trust without delay. Assets left to your loved ones in trust (by the terms of your own trust) are creditor protected.
Cost	Court costs and attorney fees.		Minimal Court costs and attorney fees to help trustee understand the trust and change the titles of your assets.
Flexibility and Control	No control or flexibility. When you die, your property is controlled and distributed by state law, regardless of the circumstances.	Some control, since your Will doesn't take effect until you die. You can write new Wills to cover new circumstances. Wills are easily contested.	You are always in control of your assets and health, unless you become disabled. At that time, the people you hand picked will deal with your assets and health the way you have instructed within the terms of your trust. The trustee has a legal fiduciary obligation to abide by your trust. If you aren't disabled, you can change your trust or even discontinue it. Trusts are difficult to contest.
Privacy	None. All probate records are open to the public (your neighbors, creditors of your beneficiaries and disgruntled family members.)		Your privacy is preserved. Trusts are not public documents. Even though an affidavit of trust has to be on file in order to sell real estate, the only information on the affidavit is the name and date of the trust and the trustee powers to sell real estate.
Minors	Probate court takes control of the inheritance. A Guardian is appointed and must file annual reports and get court approval of all financial transactions. All funds must be distributed outright to the child at age 18.		Probate court must approve the guardian, but cannot overrule your choice of trustee, nor has any control over the child's inheritance. Your appointed trustee manages the child's assets according to the terms of your trust. Usually the trustee provides funds for medical care, education, maintenance, or any special item you may decide, but does not distribute principal until the ages or circumstances that you have dictated.
Cost	Court costs and attorney fees until the funds are distributed.		Only what your trustee (often your family) chooses to accept.



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PLANNING ISSUE

	Will	Trust
Large life insurance policy(s)		X
Large qualified retirement plan(s) {IRA, 401k, 403b, etc.}		X
Simple, outright disposition of assets at death	X	X
More sophisticated disposition of assets at death		X
Privacy issues		X
Possible or probable mental disability		X
Desire to make everything as easy and inexpensive as possible for heirs		X
Out-of-state real estate or timeshares		X
Out-of-state executors, trustees or guardians		X
Tax planning	X	X
Protection of inheritance for spouse, children and grandchildren	X	X
Planning for couples on second or subsequent marriage		X
Planning for beneficiaries with “special needs”		X

Note: While some of the techniques above can be accomplished within a Will, anything but outright requires a Trust, whether stand alone or contained within the Will.



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