

# The Difference Between Wills & Trusts

Everyone is familiar with the estate planning terms “*will*” and “*trust*,” but not everyone understands the differences between the two estate planning tools and how they affect title insurance if real property is involved. Wills and trusts are both useful estate planning instruments that serve very different purposes.

## What is a last will and testament?

A last will and testament is basically a written legal document that describes to those who survive you exactly how you want your estate to be distributed at your death. Wills are very useful estate planning tools because they can be revised or revoked at any time before your death or before you become incapacitated.

## What is a trust?

Two of the major goals of a trust are to reduce estate taxes and to avoid probate, if possible. The agreement is between two parties: the trustee and the grantor, or creator, of the trust. A trust agreement essentially authorizes the trustee to hold and manage the assets in your trust for the benefit of your named beneficiaries. The trust agreement will also provide detailed instructions regarding how to manage and distribute your trust property.

## When do they become effective?

One main difference between a will and a trust is that a will goes into effect only after your death. A trust, on the other hand, takes effect as soon as you create it unless you specify otherwise. While the will directs who will receive your property at your death, a trust can be drafted to begin distributing property before death, at death or afterward – whichever you choose.

## The beneficiaries are different.

With a will, you can name beneficiaries to receive an estate at your death. With a trust, there are generally two types of beneficiaries: the ones that receive the income and possibly principal from the trust during their lifetimes, typically the creators of the trust, and those that receive the remaining assets after the trustors have passed away.

## What property does it control?

A will only controls the property that you specify. It does not cover any property that is held in joint tenancy or in a trust. A trust, on the other hand, covers only property that has been transferred to the trust. In order for particular assets to be included in a trust, it must be retitled in the name of the trust. If real property is part of the trust, the trustee/owner should contact the title insurance company for instructions regarding the transfer of the property to the trust to make sure the beneficiaries will be protected against future liens on the property.

## Trusts avoid probate but wills do not.

Another difference between wills and trusts is that a will must go through probate while a trust does not. That means a court oversees the administration of the will and confirms that the will is valid. The court also makes sure the property gets distributed according to the wishes of the deceased. Trust property is transferred outside of probate, so the court is not required to oversee the process. Therefore, trusts can save time and money. If legally advised, an alternative to transferring real property in California is a Transfer on Death deed (TOD), which allows the property owner to name a grantee for the property, avoiding the time and cost of probate. However, such instruments are often not conclusive proof of the decedent’s intent and require a 120-day waiting period to anticipate objections to the transfer before a title company can vest the property in the name of the grantee.

For more information, contact your financial advisor or title insurance company.



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