



Trusts Vs. Wills: 6 Reasons You Need Both

By Carla Wigen



CARLA WIGEN,
JD, CPA, PFS

Carla is chief operating officer at Laird Norton Wealth Management. She has more than 20 years of experience in wealth management, focused on trusts and estate planning.

New clients often ask me: “Carla, why would I consider setting up a trust, if I already have a will?” My short answer: Because life happens.

By that, I mean there are six key things that a will cannot do (or not as well) as a trust. The following are those key things, not in any order of preference. The right type of trust for your situation can maximize all these benefits, compounding the impact your wealth can have on your life now and for generations to come.

1. Control

Wills are transactional: they transfer ownership and are only effective when you pass away. After that, the assets are controlled by the new owners and that ownership evolves as their life happens. Also, wills do not actually control how certain key assets transfer (see box on next page).

TRUST SOLUTION: A trust allows for a more targeted, time-released approach to wealth distribution. Within the trust document, you can specify what assets go to whom and when. For instance, say you want your dear old vacation home to stay in the family. You can transfer ownership to a trust, with enough additional assets to provide for property maintenance and upkeep over many generations. You can also add directions on how the property might be used by the family or who must agree to actually sell it down the road. (In Washington State, a trust can last as long as 150 years.)

Trusts are also protective. In case of marriage, divorce, remarriage, etc., ownership of trust assets stays with the beneficiaries you name. Also, assets placed in certain types of trust are not usually accessible to future creditors if transferred within prevailing guidelines.

2. Privacy

Wills are thought of as very private matters. However, wills must be filed with the local court and even examined by the local probate court after you pass away. Anyone can then ask for the court file and view the will (some courts even offer online access), hence all the articles about famous people’s wills.

TRUST SOLUTION: Assets within a trust and the terms of the trust remain private, even during the probate process. The trustee will continue to carry out the terms of the trust as you have specified with only your beneficiaries knowing what the trust provides. A trust can also become operative at the time you pass away, with assets automatically transferred to it at that time.



3. Taxes

A will is limited when it comes to tax planning. While the amount you can exempt from federal estate tax has been doubled — to roughly \$11.4 million (\$22.8 million for a married couple) — this higher level will expire by the end of 2025 unless renewed by Congress. Given the politics of today, we are working under the assumption that the current estate tax exemption will not be renewed and could even be reduced below prior levels. Also, many states, including Washington, levy their own estate taxes.

TRUST SOLUTION: There are a variety of specialized trusts that can hold greatly appreciated assets (a business, a copyright, commercial real estate) and/or assets that are likely to appreciate greatly, so they are out of your estate but can still be used to support you and your spouse during your lifetimes and your heirs and/or charities after you are gone. Or a trust can hold a life insurance policy whose proceeds will cover estate taxes.

4. Expediency

Probate is a legal process for settling your estate that can take more than a year, costing your heirs time, money and potential conflict. Keep in mind that in some states, such as California, probate can take much longer than in others.

TRUST SOLUTION: Assets placed in a trust, regardless of type or location, bypass the probate process. This is especially important if you have property in more than one state. In that case, property, including a business in another state, would have to go through the probate process in that other state. This can create costly delays in how your assets are managed and missed opportunities.

One solution is to transfer ownership of the assets to a revocable trust, whose terms and beneficiaries you can change at any time. After you pass away, the revocable trust becomes irrevocable, allowing the assets to be managed according to your wishes.

5. A Plan B

As I mentioned earlier, a will applies only upon death. What happens to your assets during your lifetime if you become disabled or incapacitated? A Power of Attorney and healthcare directives (including what is known as a living will) are necessary. But they do not provide guidelines about how your assets are to be managed long term.

WILL NOT DO

Surprising to many people, certain significant assets do not transfer through a will. Instead, they will go straight to the beneficiary named or the joint owner, regardless of what the will may say. These include:

- IRAs and other types of retirement accounts
- The proceeds of life insurance policies and annuities
- Stock options and other types of equity compensation
- Bank and financial accounts held jointly with someone else
- Real estate held in joint tenancy

Therefore, it's important to plan separately for these types of assets, including keeping your beneficiary and joint account designations up to date.



TRUST SOLUTION: For assets transferred to a trust, the trustee can step in and manage the assets according to your wishes. This is especially important if you have a business, extensive real estate holdings or other assets that require ongoing oversight and expertise. If you have assets that require specialized expertise to manage, you can appoint co-trustees.

6. Legacy

A will is one way to transfer assets to family members and nonprofits. But again, when those assets change owners, the intent or purpose for your giving is likely to dissipate over time.

TRUST SOLUTION: By defining and carrying out your intent over time, a trust can create legacy. As you specify the terms of the trust, you are aligning what you know and what you value with your asset base. In that alignment, people tend to gain a strong sense of conviction about what is most important to them. And then, after the trust is set up, there is often a sense of exhilaration combined with relief. Another positive is that discussions and interactions around the terms of the trust can bring a family closer together, and an example of that is a multi-generational trust with a charitable component.

Say you transfer a high-value real estate property to a Charitable Remainder Trust (CRT). The trustee could then sell the building, invest the proceeds and make annual payments to you (and your spouse) for your lifetimes. After that, the trust payments can continue to your heirs and then to a nonprofit you want to support, or go straight to the nonprofit.

What, When and How

The six key benefits described above are possible only if a trust(s) is properly set up and managed. And for that to happen, you need to know: Which type of trust would be best for your situation? What assets should you transfer to the trust and when? How should those assets be managed/invested? Whether you want to explore trusts in general, or talk about specifics, we are here to help and answer these and other questions.

ACCESS TO DIGITAL ASSETS

In the past few years, most states, including Washington State, have passed the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). This allows wills, trusts, powers of attorney and other documents to include written instructions that give your designated fiduciaries (the executor of your will, your trustee, etc.) access to your digital assets, such as websites, social media accounts, etc. Without such written permissions, access to digital assets could be denied.



A Plan for Your Wealth and Life

Effective wealth planning is built on conversations that matter, as well as numbers.

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ABOUT THE AUTHOR

CARLA C. WIGEN is chief operating officer at Laird Norton Wealth Management. She has more than 20 years of experience in wealth management, focused on trusts and estate planning. At LNWM, Carla is responsible for ensuring that all of LNWM's expertise and resources are applied to further each client's goals and continue to evolve to meet the changing needs of our clients. Carla earned a Juris Doctorate at the Seattle University School of Law and a Master's of Law at the University of WA School of Law. She has a Bachelor's in Business Administration from the University of WA and is a Certified Public Accountant.

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801 Second Avenue, Suite 1600, Seattle WA 98104 206.464.5100 800.426.5105 lairdnortonwm.com

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