

Will vs. Trust: Which Do You Need in New York?

A Client Guide from the Law Offices of Jason G. Krantz, PC

“Do I need a will, a trust, or both?” It’s one of the most common questions we hear — and the honest answer is that it depends on your assets, your family, and your goals. This guide breaks down what each document actually does, where New York law adds its own wrinkles, and how to think about which path fits your situation.

What Is a Will?

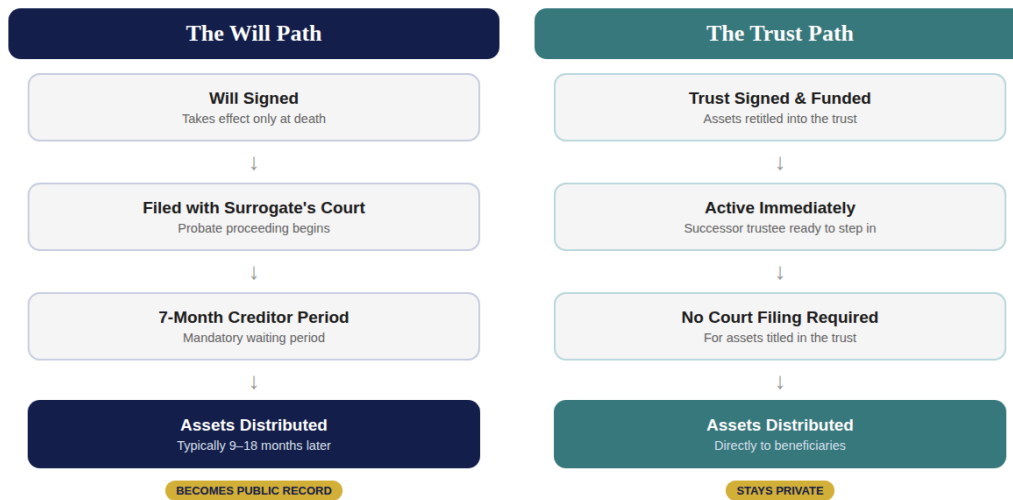
A Last Will and Testament is a set of instructions that takes effect only after you pass away. It names an executor to carry out your wishes, directs how your assets should be distributed, and — critically — it’s the only document that can name a guardian for your minor children.

- Takes effect only at death
- Must go through probate in New York’s Surrogate’s Court
- Becomes part of the public record once filed
- The only document that can nominate a guardian for minor children

What Is a Trust?

A revocable living trust is a legal arrangement that holds ownership of your assets during your lifetime, managed by you as trustee, with a successor trustee ready to step in if you become incapacitated or when you pass away. Assets properly titled in the trust bypass probate entirely and pass directly to your beneficiaries.

- Takes effect immediately, while you’re alive
- Assets titled in the trust avoid probate and stay private
- Allows a successor trustee to manage your affairs if you’re incapacitated
- Requires “funding” — actually retitling assets into the trust’s name — to work as intended



Will vs. Trust at a Glance

Feature	Will	Revocable Living Trust
Goes through probate?	Yes — filed with Surrogate's Court	No — assets titled in the trust pass directly to beneficiaries
Becomes public record?	Yes, once filed for probate	No — stays private
Takes effect	Only after death	Immediately, during your lifetime
Plans for incapacity?	No	Yes — a successor trustee can step in if you can't manage your affairs
Can name a guardian for minor children?	Yes	No — this must be done in a will
Helpful for real estate or multi-state property?	Limited — each property may need separate probate	Yes — avoids probate in every state where you own property
Typical cost & effort to set up	Lower upfront cost, simpler to create	Higher upfront cost; requires "funding" (retitling assets into the trust)
Cost & timeline at death	New York probate often runs 9–18 months and 3–7% of estate value	Minimal court involvement once properly funded

Why Many New Yorkers Use Both

For most people, this isn't an either/or decision. A common and effective approach pairs a revocable living trust with a "pour-over will" — a simplified will that names guardians for minor children and catches any stray assets that weren't transferred into the trust during your lifetime, directing them into it after death.

Think of the pour-over will as a safety net: assets already titled in the trust skip probate as planned, while anything left in your individual name gets swept into the trust through a (typically streamlined) probate process.

It's not a substitute for funding your trust properly — but it's valuable insurance against the assets people inevitably forget to retitle.

New York-Specific Considerations

- **Probate takes time.** A straightforward New York estate typically takes 9–18 months to move through Surrogate's Court, including a mandatory 7-month creditor claim period — and contested estates can take years longer.
- **Probate has a real cost.** Court fees, executor commissions, and attorney fees typically total 3–7% of the estate's value.
- **New York's estate tax "cliff."** The 2026 New York estate tax exemption is \$7,350,000 per person. Exceed it by more than 5% and the entire estate — not just the amount above the threshold — can become taxable. Trust planning is often central to managing this risk.
- **Out-of-state property.** If you own real estate outside New York, a will alone may require a separate probate proceeding in that state. A properly funded trust can avoid that entirely.

Which Is Right for You?

A will may be enough if you:

- Have a simpler estate without significant real estate holdings
- Are primarily focused on naming a guardian for minor children
- Aren't especially concerned about privacy or probate delays

A trust is worth adding if you:

- Own real estate, especially property in more than one state
- Want to avoid probate's cost, delay, and public record
- Want a plan in place for incapacity, not just death
- Have an estate approaching or exceeding New York's estate tax exemption

Most of our clients end up with both — a funded revocable living trust for the bulk of their assets, paired with a pour-over will to name guardians and catch anything left outside the trust.

Which Path Is Right for Your Family?

Every family's situation is different, and the right combination of documents depends on your assets, your goals, and your peace of mind. Schedule a consultation with the Law Offices of Jason G. Krantz, PC, and let's build a plan that fits.

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