

A Look at the Differences Between a Revocable (Living) Trust and a Last Will and Testament in Texas

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These instruments are two distinct legal instruments used in estate planning, serving different purposes and functions. Here are the key differences between a revocable trust and a last will and testament in Texas:

Revocable Trust

1. Probate Avoidance:

- **Revocable Trust:** Assets placed in a revocable trust typically avoid probate, which is the court-supervised process of distributing a deceased person's estate. This can save time and money and maintain privacy.
- **Will:** Assets passing through a will must go through probate, which involves attorney fees and court costs, and is a public process.

2. Privacy:

- **Revocable Trust:** The details of a trust generally remain private. Since it does not go through probate, the contents and distributions are not part of the public record.
- **Will:** Wills are public documents once they go through probate, meaning anyone can access the details of your estate and beneficiaries.

3. Management During Incapacity:

- **Revocable Trust:** A revocable trust can provide for management of your assets if you become incapacitated, as the successor trustee can step in to manage the trust assets without court intervention.
- **Will:** A will does not take effect until death and does not provide any management of assets if you become incapacitated. A separate power of attorney document would be needed for that purpose.

4. Flexibility and Control:

- **Revocable Trust:** You retain control over the assets in a revocable trust during your lifetime and can modify or revoke the trust at any time.
- **Will:** You can amend or revoke a will during your lifetime as well, but it does not offer the same level of ongoing asset management.

5. Costs:

- **Revocable Trust:** Establishing a revocable trust typically involves higher initial costs due to more complex drafting and funding of the trust. However, it can save on probate costs later.
- **Will:** Drafting a will is generally less expensive initially, but the probate process can be time-consuming for your beneficiaries. We are lucky in Texas, most court filing fees for a simple probate range from \$400-\$600. They can cost into the thousands in other states.

Last Will and Testament

1. Simple Asset Transfer:

- **Will:** A will is straightforward for directing the distribution of your assets upon death, including naming guardians for minor children. In Texas, if a will is drafted, executed, and not contested, the probate process can be streamlined.
- **Revocable Trust:** While a trust can also distribute assets, the primary focus is on managing and protecting assets both during your lifetime and after your death. Important Note: A revocable trust does not afford any liability protection during the grantor's life.

2. Court Supervision:

- **Will:** Probate court supervises the distribution of assets according to the will, providing a legal process for resolving disputes.
- **Revocable Trust:** Trust administration is typically handled privately without court involvement, unless disputes arise.

3. Naming Executors and Guardians:

- **Will:** You can name an executor to manage the estate and guardians for minor children in your will.
- **Revocable Trust:** A trust does not handle guardianship matters; those must be addressed in a will.

4. **Contesting:**

- **Will:** Wills are more prone to being contested in court, leading to potential delays and legal battles.
- **Revocable Trust:** Trusts are generally harder to contest, providing a higher degree of protection against legal challenges.

Summary

- **Revocable Trust:** Avoids probate, offers privacy, manages assets during incapacity, higher initial costs but potentially lower overall costs, and provides flexibility in asset management.
- **Will:** Goes through probate, is a public process, simpler and cheaper to create initially, does not manage assets during incapacity, and necessary for naming guardians.

Both a revocable trust and a last will and testament have their advantages and disadvantages, and the choice between them often depends on personal circumstances, the complexity of the estate, and specific estate planning goals. Please contact us to discuss which option would be best for you and your family.