

1. Will

Definition:

A legal document that specifies how a person's assets will be distributed upon their death and names guardians for minors.

Key Features:

- **Effective Date:** Becomes effective only after death.
- **Probate:** Subject to probate, which is a court-supervised process that validates the Will and distributes assets. This can be time-consuming and public.
- **Flexibility:** Can be amended or revoked at any time while the testator (*person creating the Will*) is alive and mentally competent.
- **Control Over Assets:** Does not take effect during the testator's lifetime; all assets remain under the individual's control.
- **Privacy:** A Will is a public document once it goes through probate.
- **Costs:** Typically lower upfront costs but probate can lead to higher costs for the estate.
- **Uses:** Suitable for individuals with simple estate planning needs who are not concerned about probate.

Limitations:

- No incapacity planning (*a Will doesn't govern assets if the individual becomes incapacitated and needs long-term care planning*).
- Subject to probate delays and expenses.
- Does not protect assets from creditors or lawsuits.

2. Revocable Living Trust

Definition:

A trust created during a person's lifetime that can be altered or revoked at any time while the grantor (*creator of the trust*) is alive and competent.

Key Features:

- **Effective Date:** Takes effect during the grantor's lifetime once assets are transferred into the trust.
- **Probate:** Avoids probate, as assets held in the trust are distributed according to its terms upon death.
- **Flexibility:** Can be amended or revoked at any time during the grantor's lifetime.
- **Control Over Assets:** The grantor typically serves as the trustee, maintaining full control over the trust assets during their lifetime.
- **Privacy:** A trust is a private document, and its terms are not publicly disclosed.
- **Costs:** Higher upfront costs compared to a Will due to the creation and funding process but may save on probate costs later.
- **Uses:** Ideal for individuals who want to avoid probate, simplify estate administration, and plan for incapacity/long-term care planning.

Limitations:

- Does not provide asset protection during the grantor's lifetime (*creditors can still access assets in the trust*).
- Requires diligent funding of the trust (*assets must be retitled in the trust's name during the grantor's lifetime or the assets may still have to go through probate and be moved over by a "pour-over" Will*).

3. Irrevocable Trust

Definition:

A trust that cannot be altered, amended, or revoked after it is created (*except under specific circumstances like a Trust Protector and/or with court approval*).

Key Features:

- **Effective Date:** Takes effect immediately upon creation and funding.
- **Probate:** Assets in the trust avoid probate.
- **Flexibility:** Very limited; once created, the terms are largely unchangeable.
- **Control Over Assets:** The grantor relinquishes control over the assets placed into the trust.
- **Privacy:** Maintains privacy, as it is not subject to probate.
- **Costs:** Higher upfront costs due to its complexity.
- **Uses:** Used for advanced estate planning goals, such as:
 - ❖ Asset protection from creditors and lawsuits.
 - ❖ Medicaid planning to reduce countable assets for eligibility.
 - ❖ Estate, gift and GST tax planning to remove assets from grantor's taxable estate.

Limitations:

- Irrevocability (*loss of control over assets*).
- Complex to establish and manage.
- Requires careful consideration and professional advice due to potential tax implications.

Comparative Chart for GENERAL Feature Differences

Feature	Will**	Revocable Living Trust	Irrevocable Trust
Effective Date	Upon death	During grantor's lifetime	Upon creation
Probate	Required	Avoids probate	Avoids probate
Control Over Assets	Full control until death	Full control while alive	No control after creation
Flexibility	Can be changed anytime	Can be modified anytime	Cannot be modified
Tax Benefits	No tax benefits	No tax benefits	May provide tax benefits
Privacy	Public record	Private record	Private record
Complexity	Simple to create	More complex	Highly complex
Costs	Generally lower costs	Higher initial costs	Higher setup and maintenance costs
Guardianship	Can name guardians for minor children (under age of 18)	Cannot directly name	Cannot directly name

*(**NOTE: If done properly by an attorney, both Revocable Living Trusts and Irrevocable Trusts will also have “Pour-Over” Wills to place assets into them that were not placed by the grantor during lifetime)*

Conclusion

Each option has its unique features, advantages, and disadvantages:

- **Will:** Best for individuals with simple estate planning needs who don’t mind probate.
- **Revocable Living Trust:** Ideal for those seeking flexibility, privacy, and probate avoidance. Useful if the client anticipates incapacity.
- **Irrevocable Trust:** Suitable for advanced estate planning, asset protection, or tax reduction strategies.