

COMPARISON OF ESTATE PLANNING OPTIONS

SITUATION	NO WILL	WILL	LIVING TRUST
If you become disabled	Probate Court appoints a Conservator who reports annually to court. The court controls your finances and assets.	Same as if you had no will because a will does not have any legal effect until the day you die.	To the extent you have funded the trust with your assets, Probate conservatorship is avoided. The trustee you picked for just such an event as your disability will manage the assets in your trust, your financial affairs according to your instructions for as long as necessary.
Cost \$\$\$\$\$	Court costs and attorney fees.		Trustee fees if the trustee decides to accept them. Often family members won't.
When you die	Probate Court oversees pursuant to CA state statutes, which control the amount and to whom your assets are distributed, including your creditors. Countless documents must be filed with the court. Process is public, time-consuming, and expensive.	Probate Court oversees the process to assure that your debts are paid and your assets are distributed according to your will. Numerous documents must be filed with the court. Process is public, time-consuming, and expensive.	If your trust is fully funded, probate is completely avoided. The pour-over will would be lodged with the court pursuant to CA law. Your trustee may distribute your assets according to the terms of your trust without delay. Also, assets left to your loved ones in trust (by the terms of your own trust) are creditor protected. A trust is the only way to ensure this.
Cost \$\$\$\$\$	Court costs. Statutory attorney fees, which are a percent based on the value of the gross estate. Possible Executor fees which are calculated the same way as attorney fees.		No court costs and relatively minimal attorney fees to help trustee understand the trust, get legal title to your assets, and then distribute according to the terms of your trust.
Time for beneficiary distribution	Six-month to two-year probate proceeding.		No delay. Weeks to distribution.
Flexibility & control	No control or flexibility. When you die, your property is controlled and distributed by state law, regardless of the circumstances.	Some control since your will doesn't take effect until you die. You can write new wills to cover new circumstances.	You are always in control of your assets and health, unless you become disabled. At that time, the people you hand picked will deal with your assets and health the way you have instructed within the terms of your trust. The trustee has a legal fiduciary obligation to abide by your trust. If you aren't disabled, you can change your trust or even revoke it.

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Privacy	No privacy. All probate records are open to the public (your neighbors, beneficiary creditors, disgruntled family members). Anyone can review the court file and see what you had and who is getting it. Notice is published in the newspaper.		Your privacy is preserved. Trusts are not public documents. Even though an affidavit of trust has to be on file in order to sell real estate, the only information on the affidavit is the name and date of the trust and the trustee powers to sell real estate. The only people entitled to notice are your heirs and beneficiaries.
Minors	Probate Court takes control of the inheritance. A guardian is appointed who must file annual reports and get court approval of all financial transactions. All funds must be distributed outright to the child at age 18. However, a Minor's Trust may be established in a will with proper planning--however, it is subject to ongoing court supervision.		Probate Court must approve the guardian, but cannot overrule your choice of trustee, nor has any control over the child's inheritance. Your appointed trustee manages the child's assets according to the terms of your trust. Usually the trustee provides funds for medical care, education, maintenance, or any special item you may decide, but does not distribute principal until the ages or circumstances that you have dictated.
Cost \$\$\$\$	Court costs and attorney fees until the funds are distributed.		Only what your trustee (often your family) chooses to accept.