

What You Need to Know About Maryland
Wills, Trusts & Probate

**What
Happens
to THEM...**



**...if
Something
Happens to
YOU?**

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"After the passing of my mother, I was given a very shocking conflict concerning my mother's will. Together with your skillful professionalism and hard work, you were able to resolve the issue in a timely manner. In the future, when it becomes necessary for the needs of a lawyer, your name will always be on the top of my list."

Should You Have a Will or Trust?

In Maryland, you should **always** have a Will or Trust to ensure that your assets are distributed according to your wishes. Without a Will or Trust, Maryland law will dictate how your assets are distributed and this is not always aligned with your goals and wishes. In addition, dying without a Will or Trust can cause a tremendous amount of expense and conflict for your heirs.

Many people do not understand the difference between a Will and a Trust, or unknowingly, may think that one costs substantially more than another. In this guide, we explore important information to educate you on what you need to know about Wills, Trusts & Probate in Maryland.

Many younger families postpone the estate planning process and their affairs are often significantly more complicated. With minor children, in particular, the needs of your children must be considered during the estate planning process. Let's explore some key points:

A Power of Attorney Dies With You

A Power of Attorney is designed to help a loved one take care of certain medical and financial decisions while you are living and either unavailable, incompetent or otherwise incapacitated. **After a person dies, the power of attorney is no longer valid;** it dies with you and can no longer be used to manage your affairs. After you pass, your Will then takes effect and determines who will manage your estate and how assets should be distributed, All assets (cars, houses, bank accounts, etc.) owned by you are subject to the probate process, which can be lengthy and expensive. The probate process can be avoided with a Trust.

What is Probate and Why Should I Care?

Probate is a legally mandated process designed to transfer assets after a person has passed to their heirs, with or without a will. All assets owned by the person at the time of his or her death must go through this process, but this process can be avoided completely with a Trust or other estate planning strategies. Consider this example:

Jim thought about his affairs long before he passed and created a Will to take care of his children. When Jim passed, his Will clearly designated that his son, Carl, should receive his primary homestead while his daughter, Judy, be given a smaller vacation home and the sum of two of his bank accounts, which at the time of his death totalled \$100,000. Since he died with a Will (instead of a Trust), his estate had to go through the probate process which required that the assets be inventoried and appraised. After several months, Medicaid filed a claim for unpaid medical bills and the State declared that the estate owed \$250,000 to cover these debts. The bank accounts had to be liquidated and the properties sold, leaving the children with far less than what Jim had intended. This entire situation could have been avoided if Jim had established a Trust instead of a Will.

“While many people think that a Will can serve their needs, there are many situations which would be better served by a Trust. The cost to prepare a trust vs. a will is nominal, especially when compared to the benefits to your heirs.”



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What's The Difference Between a Will and A Trust?

Both a Will and a Trust are useful planning tools that can serve different purposes but there are significant advantages to a Trust vs. a Will.

- **Will** - A Will allows you to establish who you want to serve as the Executor of your Estate and determine what will happen at the time of your death. It also outlines who you want to receive your assets. One of the biggest differences between a Will and a Trust is that a Will goes into effect only after you die and, in Maryland, requires your loved ones to go through the probate process (explained later) to file the Will, open an estate and distribute assets as directed in the Will. Another big difference between a Will and a Trust is that a Will is filed with the Court and becomes public, whereas a Trust is not filed with the Court and is private. This public process requires that your estate go through the probate process, all assets must be inventoried, appraised, and creditors, like Medicaid, may file claims against your estate for unpaid balances.
- **Trust** - A Trust is effective as soon as it is created and passes outside of probate court, in the event of your death. The advantage to this is two-fold. First of all, a Trust can be used to allow a Trustee to manage your affairs, while you are living, such as in the event you become incompetent or incapacitated. A simple Will does not allow for this and may require your loved ones to ask the court to appoint a guardian. With a Trust, after your death, your beneficiaries can avoid the probate process, saving considerable time and money. A Trust can also provide protection against certain creditors, like Medicaid, as well as asset protection for your beneficiaries' inheritance from future divorce, bankruptcy and their creditors. A Trust is also private, which is a great benefit to those who want to handle their financial matters discreetly.

While many people think that a Will can serve their needs, there are many situations which would be much better served by a Trust. In addition, the cost to prepare a Trust vs. a Will is nominal, especially when compared to the benefits to your heirs. Let's explore some of these:

1. *Blended Families* - A Trust can ensure that your and your spouse's assets are transferred to the appropriate heirs, and not necessarily to your new spouse's children or grandchildren. For example, Jim is married to Laura. They each have two children, and several grandchildren, by previous marriages. In the event of Jim's death, he wants to make certain provisions for his wife, but wants to guarantee that a portion of his estate goes to his children or grandchildren and to prevent Laura's children or grandchildren from inheriting his entire estate. Jim can establish a Trust that specifically addresses this need. The Trust can provide benefits for Laura during her lifetime, with the balance of the Trust monies guaranteed to go to Jim's children or grandchildren upon Laura's death.
2. *Single People, Unmarried Parents & LGBTQ* - If a couple is not married, their property is often awarded to his or her blood relatives, rather than his or her partner. A Will is imperative to ensure that your assets go to the people of your choosing but can also be challenged; whereas a Trust



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allows you to designate your beneficiaries, is less likely to be challenged, and avoids the probate process altogether. If you have children together, it's even more important to ensure that the needs of your minor children are handled in accordance with your wishes.

3. *Minors* - If you die with a Will and leave assets to a minor, they will not have the ability to access those benefits because they are not considered to have the legal capacity. The parent of a minor may not always be considered to have the legal ability to act as the child's legal representative, without a court hearing. In many cases, a Guardian of the Property of the minor must be appointed through a court proceeding. This may result in a substantial amount of your estate being spent on legal fees, rather than on the minor. It also may mean that the minor (or guardian) is unable to have access to funds which may be needed for daily living. A Trust is the best way to avoid court interference. It allows you to designate who will be responsible for managing the assets until the minor is 'of age.' It also allows you to distribute the money in a strategic manner, so that they do not receive all the funds at one time.
4. *Protecting a Person with Disabilities* - If you use a Will to leave assets to a person who receives critical governmental benefits, such as Social Security or Medicaid, a Will may subject them to losing these benefits, because the assets may make them ineligible for those services. However, a Trust owns the assets and ensures those benefits are preserved and the inheritance can even be used to pay for ancillary services that are not covered by those benefits.
5. *Estate Taxes* - When you set up a Trust, the Trust owns the assets, so your beneficiaries may be able to use certain elections to avoid common estate taxes.
6. *Creditor Protection* - Assets that are distributed via a Will can be subjected to creditors and divorced spouses (yours or your children's). A Trust, on the other hand, allows you to safeguard the assets by keeping ownership in the family. This allows your beneficiary to have access to the assets, without subjecting them to creditor claims.

As you can see, regardless of your age, income or situation, estate planning is an important process that helps safeguard you, your assets, and your loved ones. By taking time to review and plan appropriately, you can save your loved ones unnecessary expense, confusion, and conflict.

For over 65 years, Frame & Frame Attorneys at Law has been serving the legal needs of our community. The firm often works with multiple generations of the same family, for thoughtful planning and during times of crises. We meet personally with each client to assess your needs and create customized legal solutions. Frame & Frame is proud to serve as your family's lawyers and trusted advisors.

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