A RETIREMENT INSTITUTE GUIDE

# Estate Planning Basics: *Wills & Trusts*

*How your assets pass, what a will can — and cannot — do, and why the conservation of everything you've built may depend on a trust.*

WELCOME

# Knowledge first. Always.

The Retirement Institute exists to help Americans approaching and living in retirement make clear, confident, well-informed financial decisions — without the pressure of a sales pitch.

This is the second guide in our Estate Planning Series. Guide No. 01, *Estate Planning: Why a Legacy Matters*, made the case that you leave behind two estates — the tangible one measured in dollars, and the intangible one measured in meaning.

This guide turns to the machinery of the tangible estate: how assets actually move from your name into the hands of the people you love. There are only three roads an asset can take — and one of them runs straight through a courtroom.

Understanding those three roads, what a will truly does (and does not do), and what a living trust makes possible is the foundation of every sound estate plan. That is the ground this guide covers — in plain English, with no agenda but your understanding.

BEFORE YOU BEGIN

This guide is for general education only. It is not personalized legal, tax, or financial advice, and no attorney-client or advisor-client relationship is created by reading it. Estate-planning documents and rules vary by state. Please consult a licensed estate-planning attorney and qualified tax professional before acting. (Full disclosures appear at the end.)

INTRODUCTION

# Every asset you own will take one of three roads

Whether or not you ever sign a single document, every asset you own will one day pass to someone. The only question is who chooses the route — you, or the state.

Some assets pass **automatically, by operation of law** — a beneficiary form, a payable-on-death designation, a joint title. The moment of death moves them, no court involved.

Some assets pass **by private contract** — under the terms of a living trust, administered by a person you chose, on a timetable you set, with no public record at all.

Everything else passes **through probate** — a public court proceeding in which a judge supervises the payment of your debts and the distribution of what remains. It is the default road. Any asset you do not deliberately route around it will travel it.

Most families discover which road their assets are on at the worst possible moment: after a death, when nothing can be changed. This guide is about discovering it now — while every road is still open, and every choice is still yours.

We'll walk the three roads, take an honest look at what a will does and does not accomplish, tour the anatomy of a probate from petition to closing, and then examine the instrument built to bypass it entirely: the revocable living trust — including the one account that should almost never be placed in its path.

NUMBER 1

# The three roads assets travel

### ROAD ONE · BY OPERATION OF LAW

Certain assets pass automatically, the instant you're gone, to whoever the paperwork names:

- **Beneficiary designations** — retirement accounts, life insurance, and annuities pass directly to the named beneficiaries.
- **POD and TOD registrations** — payable-on-death bank accounts and transfer-on-death brokerage accounts (and, in many states, transfer-on-death deeds for real estate).
- **Joint tenancy with right of survivorship** — the surviving co-owner takes the whole asset automatically.

Two cautions. First, these designations **override your will** — an outdated beneficiary form beats your final wishes every time, so keep them current. Second, **tenancy in common is different**: your share does *not* pass to your co-owner. It passes under your will — which means it passes through probate.

### ROAD TWO · THROUGH THE COURTS (PROBATE)

Anything titled in your sole name with no designation takes the court road. With a valid will, the court follows your script. Without one, the state writes the script for you.

### ROAD THREE · BY CONTRACT (THE LIVING TRUST)

Assets titled in the name of your living trust pass under its terms, administered privately by the successor trustee you chose — no court required.

*Your will governs only what the other two roads leave behind.*

01

NUMBER 2

# The will: essential — and misunderstood

Nearly everyone needs a will. It is the only document that can do certain jobs:

- **Names your executor** — the person who settles your affairs.
- **Directs who receives your probate assets** — everything on Road Two.
- **Names guardians for minor children** — a job *only* a will can do.
- **Acts as the safety net** — a "pour-over" will catches anything left outside your trust and directs it back in.

**What it cannot do:** a will has no power over beneficiary-designated or jointly titled assets, and it says nothing while you're alive but incapacitated. Once filed, it becomes a public record — where any disappointed heir receives formal notice, a courtroom, and an open invitation to contest.

**Above all, a will does not avoid probate.** This is the most common misunderstanding in estate planning. A will is not an alternative to probate — it is the instruction manual *for* probate. Every will must be submitted to the court, validated, and administered in the public record before a single dollar moves.

### A WORD ON HANDWRITTEN ("HOLOGRAPHIC") WILLS

A holographic will — handwritten and signed, often without witnesses — is recognized in roughly half the states, and only when strict requirements are met (in some, the material terms must be entirely in the testator's own handwriting). Other states reject them outright. Even where valid, they invite exactly the fights a will exists to prevent: disputes over authenticity, capacity, and meaning. Treat one as an emergency measure — never a plan.

### AND IF YOU HAVE NO WILL AT ALL?

The state's intestacy formula decides — with spouse-and-children splits that surprise almost everyone, a court-chosen administrator, a judge selecting your children's guardian, and nothing for unmarried partners or stepchildren. (One honest exception: many states offer simplified procedures for very small estates — in those rare cases the court road can be the cheapest one. An attorney can tell you if you qualify.)

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*A will does not avoid probate. A will is the script probate follows.* 02

IN DEPTH

# The anatomy of a probate

*A typical course through probate court, from death to distribution. Details vary by state — the tolls, the delays, and the audience do not.*

1 **DEATH — THE ORIGINAL WILL IS LOCATED**
No original, or no will at all? The state's intestacy rules take over before anything begins.

2 **PETITION FILED WITH THE PROBATE COURT** — $ FEES BEGIN
Court filing fees are due at the door. The public file is opened — and it stays open.

3 **HEARING — WILL VALIDATED, EXECUTOR APPOINTED** — $ BOND
"Letters" are issued weeks later; a surety bond may be required before the executor may act.

4 **FORMAL NOTICE TO HEIRS & BENEFICIARIES**
Everyone with standing to object — including anyone disinherited — receives a written invitation to the forum.

DETOUR · **WILL CONTEST FILED**
A challenge over capacity, undue influence, or a stale beneficiary can freeze the estate for months or years — with legal fees often paid from the estate itself.

5 **NOTICE TO CREDITORS PUBLISHED IN A NEWSPAPER** — $ PUBLICATION
Your debts are advertised. Claimants are formally invited to file against the estate.

6 **INVENTORY & APPRAISAL OF EVERY PROBATE ASSET** — $ APPRAISERS
Home, accounts, and belongings are valued — and filed where anyone can read them.

7 **CREDITOR CLAIM WINDOW HELD OPEN**
Often three to twelve months, by state. Little can be distributed while the window stands open.

8 **DEBTS, EXPENSES & TAXES PAID** — $ ONGOING
Assets may have to be sold — sometimes at a discount — just to raise the cash.

9 **FINAL ACCOUNTING PREPARED AND FILED**
Every dollar in and out, documented to the court's satisfaction. More professional hours.

10 **COURT APPROVAL — ATTORNEY & EXECUTOR FEES PAID** — $ THE LARGEST TOLL
In several states these fees are set by statute as a percentage of the gross estate — before debts are subtracted.

11 **DISTRIBUTION TO HEIRS — AT LAST**
Often a year or more after death. Heirs have waited, watched, and paid for every step above.

12 **ESTATE CLOSED**
The file remains a public record — permanently.

## UP TO 5–8%

of the gross estate — a commonly cited range for total probate costs: court, legal, executor, appraisal, and publication fees.

## 9–24 MO.

a typical timeline from petition to distribution — considerably longer if the will is contested.

## 100% PUBLIC

the will, the inventory, the debts, and the identities of the heirs all become open court record.

## ×2

real estate owned in another state generally requires a second, "ancillary" probate — in that state's courts, with that state's fees.

*Too often, the surest beneficiaries of a probate are the professionals it employs.*

ILLUSTRATIVE · PROCEDURES VARY BY STATE

NUMBER 3

# The living trust: the private road

A **revocable living trust** is a legal container you create during life. You typically serve as your own trustee and remain the beneficiary — nothing about daily life changes. You name a successor trustee to step in at your incapacity or death. Everything changes at exactly the moments that matter:

- **It avoids probate.** Assets titled in the trust are simply not probate assets. Your successor trustee administers and distributes them privately — often in weeks, not years — with no petitions, no hearings, and no court calendar.
- **It is private.** No public inventory, no published creditor notices, no open file. Your affairs remain your family's business.
- **It plans for incapacity.** If you can no longer manage your affairs, your successor trustee steps in seamlessly. Without that, your family may face a **conservatorship** — the court proceeding (in some states called guardianship, and sometimes called "living probate") in which a judge appoints, supervises, and re-reviews, year after year, the person managing your life. A funded trust is the cleanest way to keep that judge out of the room.
- **It is difficult to contest.** Unlike a will, a trust arrives in no courtroom and mails no invitations. Administration continues while any challenger must mount a lawsuit from the outside — a far steeper hill than raising a hand in a probate already underway.
- **It is easy to live with.** While you're alive and competent, you can amend it, restate it, or revoke it entirely. You keep full control, full use, and full flexibility.

One clarification you deserve: during your lifetime, a revocable trust generally does **not** shield assets from your own creditors — you kept control, so the law treats them as yours. (That protection requires irrevocable structures — a different conversation.) Where a trust shines is downstream: it can hold what you leave in protective shares, guarded from your heirs' creditors, lawsuits, and divorces in ways an outright inheritance never is.

In short: if you own even modest assets — or love even one person — a living trust deserves a serious conversation. Whether it's right for you is a determination only a licensed estate-planning attorney can make.

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*A trust is not a document for the wealthy. It is a system for the prepared.*

03

NUMBER 4

# Funding the trust: the step most people miss

Signing a trust creates it. **Funding** it — retitling assets into its name — is what makes it work. An unfunded trust is an expensive binder: anything left outside falls to your pour-over will, and marches straight back into the probate the trust was built to avoid.

### RETITLE INTO THE TRUST

- **Real estate** — including out-of-state property; this alone can eliminate a second, "ancillary" probate.
- **Bank accounts** — checking, savings, CDs (non-retirement).
- **Taxable brokerage accounts** — non-retirement investments.
- **Business & LLC interests** — per your operating agreements and attorney.
- **Valuable tangibles** — collections and heirlooms, typically by assignment.

### LEAVE TITLED IN YOUR NAME

- **Life insurance** — the policy already avoids probate by designation, so retitling it is usually unnecessary. You *may* name the trust as beneficiary so the proceeds are managed under its terms. (Trust-*owned* insurance — the ILIT — is an advanced estate-tax strategy most families never need.)
- **Annuities** — pass by designation; changes carry tax consequences, so involve your advisor first.
- **HSAs** — cannot be owned by a trust; name beneficiaries directly.
- **Vehicles** — many states offer simple transfer procedures; often left out.
- **Retirement accounts — never retitle.** The exception to everything. See the next page.

And on every account that passes by designation: **keep the beneficiary forms current.** The designation beats the will — and the trust has no say over it.

*Retitle the house. Never retitle the IRA.*

04

NUMBER 5

# The IRA mistake

Retirement accounts are the exception to everything in this guide — and the place where well-meaning trust planning does the most damage. Two rules:

**First: never retitle a retirement account into a trust.** An IRA or 401(k) cannot simply change owners. Retitling the account is treated as a full distribution — the entire balance can become taxable income in a single year, at your highest rates. There is no undo.

**Second: think very hard before naming the trust as the account's beneficiary.** This one is more common, because it sounds prudent — "everything to the trust." For most families, it is a costly error, for three reasons:

- **Compressed trust tax brackets.** If the trust holds the withdrawals rather than passing them straight through, that income is taxed at trust rates — which reach the top federal bracket of 37% at only around $16,000 of income. An individual doesn't reach that bracket until income above roughly $600,000. Same dollars, taxed at the family's highest possible rate.
- **A shortened clock.** Under the SECURE Act, most non-spouse beneficiaries must already empty an inherited account within 10 years. A trust that isn't drafted to strict "see-through" standards can compress that window to as little as five years — accelerating every tax bill on the way.
- **A spouse loses options.** Named directly, a surviving spouse can roll the account into their own IRA and keep deferring. Trapped behind a trust, that flexibility can be lost for good.

Done by default, it is the rare estate-planning move that manages to shortchange your children and accelerate the IRS at the same time. Name the people, directly — and keep the forms current.

**The exceptions — done on purpose.** There are good reasons to name a properly drafted trust: minor children, a special-needs beneficiary whose benefits must be protected, serious spendthrift or creditor concerns, or blended families. Every one requires an attorney building a qualifying trust deliberately — never a default checkbox.

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*Name a trust as your IRA beneficiary only on purpose — never by default.*

05

IN PRACTICE

# Two houses, two years

ILLUSTRATIVE

Two neighbors pass away in the same month. Similar homes, similar savings, similar families who loved them.

**The first left a valid will** — carefully drafted, properly witnessed. It worked exactly as designed: it went to probate court. Petition, hearing, published creditor notice, a public inventory of everything the family owned. A relative who felt shorted filed an objection that took months to resolve. The family waited roughly sixteen months for distribution, and the combined court, legal, appraisal, and executor costs approached the commonly cited range of up to 5–8% of the gross estate. Every filing, every figure, every family name — open record.

**The second left a funded living trust.** Her daughter — the successor trustee — presented the trust and a death certificate at the bank, paid the final bills, and distributed everything according to her mother's written instructions in about ten weeks. No petitions. No published notices. No audience. The disappointed relative had no courtroom to walk into — only the prospect of financing a lawsuit from scratch, and thought better of it.

The first family got a legal proceeding. The second got a quiet transfer and their year back.

*Same town. Same size estate. Two very different years for two families — decided long before, at a kitchen table, with a signature.*

THE BOTTOM LINE

# Choose the road — before it's chosen for you

Every asset you own is already on a road: automatic transfer, private trust, or public probate. Doing nothing is not a neutral act — it is choosing the courtroom, with the state holding the pen.

Nearly everyone needs a will — for the executor, for the guardians, for the safety net. But a will alone routes your estate through probate: a process that is public, slow, invasive, contestable, and commonly estimated to consume up to 5–8% of the gross estate. For most people with even modest assets — or people they love — a funded revocable living trust deserves serious consideration: private, difficult to contest, seamless in incapacity, and free of the courtroom altogether. And whatever you build, handle retirement accounts with care — they follow their own rules, and they punish defaults.

Whether a trust is right for you, and how it should be drafted, is a determination only a licensed estate-planning attorney can make with you. What you bring to that meeting is what this guide was built to give you: a clear map of the roads.

### TWO HONEST QUESTIONS WORTH SITTING WITH

— If you became incapacitated tomorrow, who could legally step in for you — and would a court have to appoint them?

— Do you know, asset by asset, which road each one is on today — and how much of your estate would pass through probate?

This guide pairs naturally with its companion, *Estate Planning: Why a Legacy Matters*, on the values, wisdom, and stories no legal document is required to carry. Both are worth a conversation — with your family, and with a qualified estate-planning professional.

RETIREMENT
INSTITUTE

# About The Retirement Institute

The Retirement Institute is a non-profit dedicated to financial education for Americans approaching and living in retirement. We publish clear, unbiased guides on the decisions that matter most — taxes, income, healthcare costs, and legacy — so that families can act from knowledge rather than fear. We don't sell products. We teach.

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*This educational guide is shared with the compliments of an independent financial professional.*

## IMPORTANT DISCLOSURES

This guide is provided by The Retirement Institute for general educational purposes only. It does not constitute, and should not be relied upon as, personalized legal, tax, insurance, or financial advice, and it does not create any attorney-client, advisor-client, or fiduciary relationship. The examples shown are hypothetical, simplified for illustration, and do not depict any specific individual.

Estate-planning documents — including wills, trusts, powers of attorney, and beneficiary designations — are governed by state law, and their names, requirements, and effects vary by state. The recognition and requirements of holographic (handwritten) wills vary by state. Probate procedures, timelines, and costs vary widely by state and by estate; cost and timeline figures cited are approximate, commonly cited ranges provided for illustration only and are not predictions or guarantees. Some states offer simplified procedures for qualifying small estates.

A revocable living trust generally does not protect assets from the grantor's own creditors during the grantor's lifetime. Any creditor or divorce protections for beneficiaries depend on the drafting of the trust and on applicable state law. Beneficiary designations generally control the disposition of the accounts they cover regardless of will or trust provisions.

Tax discussion is general and simplified, reflects federal law as of publication (including the SECURE Act's distribution rules), and omits state taxes. Tax brackets and thresholds adjust periodically and figures cited are approximate. Whether and how a trust may serve as a retirement-account beneficiary involves complex qualification rules; consult a qualified tax professional and a licensed estate-planning attorney before designing or executing any strategy or document.