

People in Texas have more options than ever before for managing their property and ensuring that it goes to the right people. While the flexibility allows you to customize your estate plan to fit your specific goals and to take steps now that save loved ones from dealing with headaches in the future, it can be confusing.

If you're considering creating a revocable living trust to distribute property to loved ones without the need for probate, it makes sense to wonder what will happen to your will. After all, a will is a document you set up to distribute your property after death, and a trust will do the same thing.

But the situation with wills and trusts is more complicated than it may seem at first glance, so it is worth taking some time to appreciate how these legal instruments work together. A trust does not invalidate a will, but it could potentially remove all of the power of a will. To understand why, you need to consider specifically what each of these estate planning tools accomplishes.

Wills Distribute Property in Your Estate

While we often think of an estate as a big house set on a vast expanse of property, in legal terms, it means something very different. An estate is the property you leave behind when you pass away. It includes real property (land and houses) and personal property (everything else). However, there are some things that are excluded from your estate because their ownership passes directly to someone else at the time of your death.

If you own a house or a car jointly with someone else and the ownership includes a right of survivorship, then when one owner dies, the other owner automatically acquires full ownership of the property. So, for example, if two sisters own a boat

together and both of them have their names on the title and it specifies that ownership includes a right of survivorship, then one sister passes away, ownership of the boat passes directly to the other sister, and the boat does not become part of the deceased sister's estate.

Property, such as bank accounts and investment accounts, often has beneficiary clauses specifying that upon the owner's death, ownership will pass directly to the beneficiary. Those accounts, then, will not become part of the estate either.

A will designates how the ownership of property in the estate should be distributed to others when the person who created the will passes away. All property in the estate will need to go through some form of probate process before it can be distributed according to the terms of the will. The probate process is designed to ensure that creditors of the deceased person get paid and that the appropriate people receive the remaining assets. The probate process can take up to a year or more to complete, requiring approval from the court, which can make it confusing and time-consuming.

If the deceased person did not give much thought to estate planning, all of their property might be part of their estate, subject to probate. If they took some steps to enable property to pass directly, bypassing the probate process, then the estate might not have much in it. In fact, there might not be anything in it.

Trusts are Virtual Containers for Holding Property

A trust is a legal tool that operates like a virtual bucket or jar. It is an empty vessel that can hold any type of property. Once you create a trust, you can put anything in

it—real estate, vehicles, bank accounts, stocks, bonds, treasure chests full of gold coins—whatever you own, you can move into a trust. When that happens, the trust essentially owns it, and you do not.

How Trusts are Managed

Since a trust is just an artificial legal bucket of property, it cannot do anything with the property other than hold legal ownership of that property. The property in the trust is controlled and managed by the person designated to serve as the trustee. A trustee can invest trust property and take steps to preserve it. But the trustee is obligated to use the property only for the benefit of the person (or people) named as the beneficiary of the trust. Therefore, the trustee cannot withdraw money from the trust to purchase a car for their own use, but they can buy a car for the beneficiary if the trust instructions permit it. Often, trusts are established to hold money for a specific purpose, allowing the trustee to use trust property only for that purpose.

For example, a grandparent might create a trust to hold money for a grandchild's future college expenses. The trust document would be written up in a way that gives the trustee authority to disperse funds for tuition, fees, and other necessary expenses. However, the trustee may not be permitted to provide the beneficiary with money for a car unless it is deemed necessary.

Trusts Can Be Revocable or Irrevocable

There are two primary types of trusts, which operate in distinct ways. When a trust is irrevocable, the person who created it can't change any terms or control any of the property in the trust. They lose access to it completely.

Why would they set up this type of trust? The loss of direct control can provide numerous tax benefits for both the trust creator and the beneficiary. A property owner can use a trust to help someone in a specific way, but since the property in the trust does not belong to either the creator or the beneficiary (or the trustee) creditors cannot take it, the beneficiary cannot waste it, and it cannot be counted as property for individuals with special needs who rely on means-tested government programs for support.

When a trust is revocable, the person who created it can change anything at any time. That means they can still control the property. This type of trust does not provide tax benefits or protection from creditors. But it does provide a way to pass property to others without the need for costly and complex probate proceedings.

Revocable trusts are often set up specifically to avoid probate. When this is a goal, the creator of the trust is also designated to serve as the trustee and beneficiary. But there will also be an alternate trustee and an alternate beneficiary. Since the primary trustee controls the property in the trust and the primary beneficiary uses the property in the trust, the person who created the trust can do whatever they want with the property, just like they did before it was put into a trust.

When the creator of the trust (who is also the primary beneficiary and the primary trustee) passes away, then the alternate trustee automatically has authority to take over management of the property in the trust. The new trustee can pay the bills left behind by the deceased person and then hand over all the property in the trust to the alternate beneficiary, who becomes the new owner. This occurs without the need for court approval or any other form of authorization.

What Happens to a Will When a Trust is Created

There are many ways that you can revoke your will. But creating a trust is not one of them. What happens when you have both a will and a trust is that property in your trust passes to the beneficiaries designated in the trust, and if there is property left outside the trust (property that is not co-owned or that didn't pass through a beneficiary clause), then that remaining property is distributed according to the terms in your will.

The will must be submitted to the court for approval, and then the person named as executor must get authorization from the court before they can do anything with the property in your estate. For many people, the goal of their estate plan is to ensure that all property is set up to pass through the trust or pass directly another way so that there is nothing left over to become part of an estate. Then there is no need for probate.

However, it is always helpful to have a will as a backup in case property is accidentally excluded from the trust. Estate planning attorneys generally recommend creating what is known as a "pour-over will," specifying that all property in the estate will be moved to the trust and distributed by the trustee. This keeps the plan consistent. But if you don't have a pour-over will, the estate property will be distributed according to your original instructions.

When you create a pour-over will or any new will, it automatically invalidates the old will. You can also revoke your old will by intentionally destroying it. Your will can be invalidated by drawing up a new will, but it is not invalidated by creating a trust. Your

trust might, however, leave your will with no power because if there's nothing in your estate, the will has no effect.

The Nordhaus Firm is Here to Answer Your Questions and Help Secure Your Future

The right estate plans can protect you during your lifetime and protect loved ones after you pass away. However, your plans should be reviewed periodically to ensure they still align with your goals and meet current legal requirements.

At The Nordhaus Firm, we know the process can be challenging and confusing, and we're here to help. Schedule a free consultation with us today to learn more about the assistance we can provide now and in the days to come. To get started, call 214-726-1450 or contact us online now.