Wills and trusts are both tools estate planning attorneys in Texas use to enable people to determine who will receive their property after they pass away. Each of these tools can also accomplish some additional goals as well. While wills and trusts are often lumped together, they operate very differently, so it is important to understand the distinctions before you can determine the right plans for yourself and your family.

At The Nordhaus Firm, we are happy to sit down and talk to people about these planning tools and how they would work in their individual situations. To get the thought process started, here are some general guidelines about wills and trusts and the differences between them.

Will vs. Trust

Most people have a basic understanding of what a will does. This document provides directions about who you want to be in charge of your final affairs, who you want to receive your assets, and who you would want to serve as guardian of your children if you pass away while they are still minors. This document has no effect whatsoever until you pass away, and even then, the probate court must approve it before the directions in the document can be followed.

Trusts are very different. A trust can be thought of as a virtual container for holding property, and it establishes particular relationships regarding that property. The person who manages the property in the trust is known as the trustee. While trustees control trust property, they don’t use it for themselves. Instead, they act like caretakers, managing the property for one or more beneficiaries. Trusts can be set up to take effect right away or they can be prepared to become active at a point in the future, such as after someone passes away. Many types of trusts are used for different purposes.

How Wills and Trusts are Used to Distribute

Property

A type of trust known as a revocable living trust is a tool that is very popular in estate planning as an “alternative” to a will. Here’s how it operates:

1. An individual or couple works with an estate planning attorney to prepare the trust document, naming them as the trustee and beneficiaries.
2. The trust document also names successor trustees and successor beneficiaries.
3. The trust creator moves property into the trust. They continue to manage and use the property just as they always have.
4. When the trust creator passes away, the person named as the successor trustee takes over management of the trust property, pays final bills, and distributes the remaining trust assets to the successor beneficiaries without the need for court authorization.

To understand why someone would go to all this trouble with a trust, you need to contrast the situation with what happens when property is distributed through a traditional will. In those situations, the person named as the personal representative of the estate needs to petition the probate court for authority to administer the estate. Then, they need to follow the complex probate requirements regarding tasks such as inventorying the estate, notifying creditors and heirs, and paying bills and taxes. The beneficiaries of the will do not receive any assets until the formal process is nearly complete, and that often takes a year or more.

Which is Better—a Will or a Trust?

Legal requirements make it difficult to pass your property to loved ones regardless of the tools you use. The overall difference is that when you use a trust, you need to put in more work at the beginning, but your loved ones have an easy time settling your affairs and receiving distributions, while when you use a will, the process of creating a will is easier but you leave more work for your loved ones to do after you pass away.

With a trust, you can also enable your successor trustee to take over the management of trust property if you should become incapacitated, which is a nice measure of security. However, you cannot use a trust to nominate a guardian for minor children. Ideally, when you create a revocable living trust, your estate planning attorney also prepares a “pour-over” will to serve as a backup. If any assets get left out of the trust, this document moves them into the trust, and it can also be used to nominate a guardian for minor children if necessary.

The Nordhaus Firm Can Help You Determine the Most Effective Plans for Your Future

Proper estate planning includes measures that not only protect your loved ones after you pass away but also protect you during your lifetime. At The Nordhaus Firm, we work closely with you to discern your needs and goals so we can develop the most efficient plan to accomplish those goals. We invite you to schedule a free consultation to learn more about the ways we can safeguard you and your family. Just call 214-726-1450 or contact us online to get started.