

# Estate Planning Essentials: What is the Difference Between a Trust and a Will? When Do I Need a Trust?

These frequently asked, simple sounding questions can actually lead to hours of discussion. There are numerous types of trusts, and they can relate to your will in various ways. Below is a brief summary of a few common types of trusts and how they relate to your will.

## **Revocable Trust Agreement or ‘Revocable Living Trust’**

This type of trust is often referred to as a ‘will substitute.’ Similar to a will, a revocable trust usually contains the primary dispositive provisions of the assets of the person(s) creating the trust (known as the ‘trustor’). The most common reasons someone might use a revocable trust in an estate plan are:

1. to avoid the court process known as ‘probate’ at death (provided that all the trustor’s assets are either titled or designated to pay on death to the trust or some other individual/entity),
2. to maintain privacy over the disposition of his/her estate (a revocable trust is typically not a matter of public record, like a probated will), and
3. to provide for ease of administration by a successor trustee upon the incapacity or death of the trustor.

During the trustor’s lifetime, a revocable trust can be amended or revoked and is essentially ‘see-through’ for tax purposes (meaning it does not need a separate tax ID number; the trust assets are reported under the trustor’s Social Security number, and any income reported on his/her personal return, just as it would be otherwise). Even with a revocable trust plan, the trustor would still need a last will, commonly referred to as a ‘pour-over will,’ which would simply provide that all of the trustor’s probate assets (if any) should pass to his/her revocable trust upon death.

## **Trusts for Children, Grandchildren or Other Descendants**

This type of trust can be created during life or after death under the terms of a trust agreement or a will. A relatively common example would be where a married couple each have a last will that leaves all assets to the surviving spouse at the first death, and then at the second death, leaves the total remainder of both estates to separate trusts for their children or the surviving descendants of any deceased child. This type of trust is typically an irrevocable spendthrift trust, which is managed by a trustee who administers and distributes the income and/or principal of the trust for the benefit of the beneficiary (child/grandchild). Sometimes the trust may be drafted to last only for a certain time (until a beneficiary reaches a certain age), but many times the trust will continue for the lifetime of the beneficiary, passing to the beneficiary’s descendants at his/her death under the same terms in separate trusts for as long as the law will allow (currently 360 years in Tennessee).

The most common reasons someone might include these types of trusts in his/her estate plan are:

1. to provide for minor or young children who are not capable or mature enough to manage money,
2. to provide spendthrift or creditor protection over inherited funds, and
3. to preserve assets for the next generation (grandchildren or beyond).

## **Supplemental Needs Trust or ‘Special Needs Trust’**

This type of trust is another one that can be created either during life or after death under the terms of a trust agreement or a will. The fundamental purpose of a supplemental needs trust, commonly referred to as a ‘special

needs trust' or 'SNT,' is to provide for the supplemental care needs of a beneficiary who has a disability. There are various types of public and private benefits that are available to individuals with disabilities, many of which are means-tested. Assets within a special needs trust are intended to supplement, but not supplant such benefits and therefore ensure the beneficiary maintains his/her eligibility for such services. There are two primary types of special needs trusts: (1) First Party (d)(4)(A) Special Needs Trust and (2) Third Party Special Needs Trust. This distinction is very important and could be the subject of another several hours of discussion. Suffice it to say that a First Party (d)(4)(A) Special Needs Trust is funded with the beneficiary's own assets and generally must contain Medicaid payback provisions. A Third Party Special Needs Trust is funded with the assets of someone other than the beneficiary and generally does not contain Medicaid payback provisions.

*The Chambliss Estate Planning team works with clients on simple plans all the way to very complex, individualized plans. If you or a loved one have questions about estate planning, including trusts and wills, please contact a member of our team. We take a holistic approach to ensure each of our clients' needs are met.*