

## Does a Trust Make Sense

1. Assets in the trust avoid guardianship on incapacity. *There are many circumstances where powers of attorney cannot do the same thing.*
2. A trust imposes a high duty of care on a Trustee and eliminates third party liability. *Powers of attorney cannot do the same thing because though they impose a high duty of care on the Agent, they do not eliminate the third party liability and that third party that has the liability must accept the power of attorney. Because they remain liable, they frequently will not allow the power of attorney to be used.*
3. A Trust is easily changed should you desire to do so. *Re-drafting a will is more difficult because it requires more formality than a trust.*
4. A Trust easily moves with you from state to state because it is valid in every state and interpreted by the state where it was written. *Wills are designed to be valid and interpreted in the state they are drafted in. Wills are interpreted by the death state, which may not be the same state in which it was drafted. Powers of attorney are also state specific.*
5. A trust can define disability or incapacity in several ways and if property defined, does not require any court involvement. *Proving disability or incapacity with a power of attorney may require going to court. For a third party accepting the power of attorney, nothing provides comfort and eliminates liability like a judge's signature.*
6. A Trust provides one planning document full of instructions for your care upon your incapacity. *Powers of attorney cannot provide those instructions and are frequently not accepted. Generally, the longer a power of attorney is, the less likely it is to be accepted because the third party is responsible if the Agent doesn't carry out the terms. Wills cannot work until your death, and thus can't help you on incapacity. Powers of attorney, unlike your trust, terminate upon death. Powers of attorney probably won't work if the Principal can't be found because of the risk that they have died and the power of attorney is now invalid.*
7. A Trust provides one planning document full of instructions for the care of your loved ones upon your incapacity. *A power of attorney created for you cannot provide those instructions for your loved ones, and wills cannot work until your death.*
8. A Trust provides one planning document full of instructions for the care of your loved ones upon your death. *Wills do not work until probated and to accomplish the same thing, the will must have those instruction and the assets must be distributed*

*to the estate. Probates are more expensive and can take weeks, months, and in some cases years if there are problems in probate.*

9. A trust provides benefits for your beneficiaries as long as the trust is drafted to apply to the beneficiaries. *Probate codes may limit how long those benefits can apply.*

10. A trust provides control of your assets for your family in case of your disappearance or absence instead of your family perhaps having to wait for several years to have you declared dead to access assets and information. *Without this ability, upon disappearance, it can take years before one can be declared to be legally dead, leaving the family unable to access assets and accomplish things such as repairing or selling the family home. Meanwhile, powers of attorney can't work without evidence that the person is alive.*

11. A trust provides continuity in the handling of your affairs by efficiently transferring your property to your loved ones after death. *Probate takes more time, and isn't always smooth.*

12. A trust provides certainty of result if it is drafted property and completely funded. *Other methods of passing assets don't provide the certainty of results.*

13. A trust acts as a receptacle to own or be the beneficiary of assets. *Wills do not work until probated and to accomplish the same thing, assets must be distributed to the estate. That can take weeks, months, and in some cases years if there are problems in probate.*

14. Trusts make the best beneficiaries of life insurance policies because if an individual is named, and they are incapacitated or dead, then the proceeds go through either guardianship or probate. *If the estate is named, then the proceeds are subject to the debts of both the decedent and the beneficiary. Otherwise, life insurance proceeds are not subject to the debts of either.*

15. A trust allows life insurance to be paid to the trust without being subject to your current or future debts or creditors. *Wills do not work until probated and to accomplish the same thing, assets must be distributed to the estate. That can take weeks, months, and in some cases years if there are problems in probate. Direct beneficiary designations may or may not provide the same benefits, depending on the state laws of both the decedent and the recipient.*

16. A trust allows life insurance to be paid to the trust without being subject to current or future debts or creditors of beneficiaries'. *If life insurance is paid to the estate, it is subject to the debts and creditors of the insured decedent and the debts and creditors of the beneficiaries.*

17. A trust allows life insurance to be paid to the trust so it passes according to your distribution and control plan. *Life insurance left directly to beneficiaries can be subject to divorces, lawsuits, and creditors, or it may undo your overall planning due to lack of coordination with your distribution plan. It will also pass to the beneficiary without any controls, and may bypass your tax planning.*

18. Upon your incapacity, a trust avoids the expenses and fees associated with guardianship on all assets owned by your trust. *Guardianship usually costs tens of thousands of dollars and puts a judge, creditors, and everyone but your family in charge of your affairs.*

19. A trust avoids the expenses and fees associated with probate on all assets owned by your trust. *Probate can be expensive and time consuming. It absolutely provides a forum for disgruntled heirs to bring disputes, often without them paying legal fees on the front end. Probate benefits your creditors, and requires notice to them with a time frame for when they must make claims. But the worst thing it does it put a judge, disgruntled heirs, creditors, alleged creditors, and everyone but your family in charge of your affairs.*

20. A trust ensures your family's privacy following your incapacity or death by avoiding guardianship and probate on all assets owned by your trust. *Guardianship and probate are public and anyone can obtain the information in those files.*

21. A trust enables you to rely on your Trustees should you wish to travel or otherwise delegate the day-to-day management of your financial affairs. *Powers of attorney may not work when you are traveling since it might not be possible to prove you are actually alive, and if that is a problem, it will be too late to do anything about it. Again, if you can't be found, there is no guarantee that you are alive and the institution likely won't risk allowing the use of the POA in case you are dead.*

22. A trust enables you to measure how your successor Trustees perform when you delegate management duties to them. *You will never know how the executor of your will performs.*

23. A trust is difficult for disgruntled heirs to attack and helps avoid disputes. *By avoiding probate, it forces disgruntled heirs to hire and pay legal fees on the front end of this action to dispute any part of your plan.*

24. A trust can eliminate your family paying for medical procedures that were not authorized by your medical agents to the extent your estate avoids probate. *If your estate goes through probate, unscrupulous medical professionals can force medical procedures upon you or a loved one and force your estate to pay the costs.*

25. Upon death, a trust adequately provides for the surviving spouse, children, or other beneficiaries. *No other planning device provides enforceable instructions.*

26. For married couples, a trust achieves at least some of your death tax objectives by using both exemption equivalents. *This is far more efficiently done in a trust than in a will. That's because of the disadvantages of having life insurance or annuities either paid to an individual or paid to an estate to take advantage of the tax planning. Right of survivorship planning will completely avoid your tax planning.*

27. Even an unfunded trust can still work better than an unfunded will via either the pour-over will, or the “magic wand” funding clause that allows trust treatment of assets that aren't in the trust yet. *With a will, those assets pass completely by a different set of rules.*

28. A trust is easier to sign than a will. A trust is a contract, and only requires the signature of the Trustmaker to be valid. *A will requires [1] the will-maker (testator) to be sworn in, asked questions, and sign, [2] a valid self-proving affidavit that conforms with state law or disinterested witnesses to be brought to court to prove up the will, and [3] at least two disinterested witnesses who must be sworn in and ask questions under oath. There are a lot of potential things a challenger could challenge about a will signing, whereas with a trust signing, a challenger would have to prove that the Trustmaker's signature is forged, or that duress was involved in the signing and later management.*

29. A trust is more difficult to challenge for incompetence than a will. To prove incompetence, the challenger must prove the Trustmaker was incompetent at the time of signing, and that the Trustmaker remained incompetent while managing the trust, since at any time the Trustmaker regained competence, he could have changed the trust. *A will challenger only has to prove there was incompetence at the time of the will signing, which might be as simple as showing the testator wasn't himself that day, though it is usually more complicated than that.*

30. A trust is more difficult to challenge for undue influence than a will. To prove undue influence, the challenger must prove there was undue influence at the time of signing, and that the Trustmaker remained under that undue influence while managing the trust. *A will challenger only has to prove there was undue influence at the time of the will signing, which might be as simple as showing the attorney who drafted it recommended that the testator sign the will, though it is usually more complicated than that.*

31. A trust can have a private incapacity panel that allows incapacity to be determined by a private panel instead of through the courts or the medical profession, thus avoiding the need to go to court and without requiring doctors to sign things for which they might be held liable later. *Wills do nothing for someone who is incapacitated. There are several situations where powers of attorney won't work without going to court.*

32. A trust can allow a Trust Protector to modify or update the estate plan if there are changes in laws or circumstances that make it necessary or beneficial without spending the money to go to court and without having to depend on a judge's

approval. *Wills cannot be modified except by judicial modification, and judges might not approve the change.*

33. A trust can allow a Trust Protector to modify or update the estate plan to protect assets from creditors of beneficiaries. *Wills cannot be modified except by judicial modification, and a judge might be unable or unwilling to approve the change.*

34. A trust can allow a Trust Protector to modify or update the estate plan to take advantage of tax saving opportunities. *Wills cannot be modified except by judicial modification, and a judge might be unable or unwilling to approve the change.*

35. A trust can allow each spouse to control the disposition of property so that in case of remarriage of the surviving spouse, the children are not accidentally disinherited. *Wills can allow this, but not as efficiently as a trust because of probate, and assets passing by right of survivorship or direct beneficiary designations can create the problem of children being accidentally disinherited. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will as completely as it does in a trust.*

36. A trust can allow the first decedent to control the distribution of his or her share of community property and his or her separate property while postponing any estate tax due until the surviving spouse dies. *Wills can allow this, but not as efficiently as a trust because of probate. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will as completely as it does in a trust.*

37. A trust can eliminate disputes between the surviving spouse and prior marriage children over the control or distribution of assets. *Wills require probate, which creates a forum to bring disputes.*

38. A trust can eliminate the possibility that if the surviving spouse remarries, the first decedent's children don't get what was intend for them to have. *Wills can allow this, but not as efficiently as a trust because of probate. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will as completely as it does in a trust. Further, wills require probate, which creates a forum to bring disputes.*

39. A trust can avoid disputes between different sets of children from previous marriages. *Wills can allow this, but not as efficiently as a trust because of probate. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will. Further, wills require probate, which creates a forum to bring disputes.*

40. A trust allows parents with minor children to choose to have children reared according to their values. *Wills cannot do this if the court is expected to enforce religious values instead of your Trustee enforcing those values.*

41. A trust can encourage children or grandchildren to get a post-high school education. *Wills can do this, but because of probate, not as efficiently as a trust. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will as completely as it does in a trust.*

42. A trust can provide educational standards for a post-high school education so beneficiaries don't become professional students or trust babies. *Wills can do this, but because of probate, not as efficiently as a trust. Rarely is that issue even considered in will-based planning. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a will as completely as it does in a trust.*

43. A trust can create protective trusts for your loved ones that are free from the supervision of the probate court. *Wills can allow protective trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.*

44. A trust can provide creditor and lawsuit protection for children, including protection from failed marriages, and protection from estate taxation on the child's death. *Wills can allow protective trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.*

45. A trust can provide that if a beneficiary gets divorced, has current creditors, even if unknown to you, or is sued in the future, what you leave them will not be lost to those events. *Wills can allow protective trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.*

46. A trust can provide that if a beneficiary has special needs requiring them to remain eligible for a governmental assistance program. *Wills can allow protective trusts, but require probate, which automatically involves the court and makes it easier for governmental agencies to bring claims against your loved ones.*

47. Can provide that upon the death of a beneficiary, assets will not be subject to estate tax again upon the beneficiary's death. *Will-based plans are often not "funded" so the will does not control distribution of all the assets and often the estate tax planning doesn't actually work in a will. This would be devastating in a dynasty plan.*