



Understanding the Basics of Nebraska Probate: Will vs. Trust

As an estate planning attorney many of my clients ask me if they need a will or a trust. Each situation is unique depending on the individual client's goals and financial situation. It is important to understand the difference between a will and a trust when determining the best option.

A will is a legal document that describes how a person would like their property and assets to be distributed at death. A will must be probated at the person's death. Probate proceedings are a matter of public record.

Probate is the legal or court process that manages and distributes the assets of a deceased person to his or her beneficiaries. Probates are required for all estates exceeding \$100,000 in the state of Nebraska. A petition must be filed along with the original will. If the decedent had no will, the estate will be distributed according to the laws of intestate succession where the assets are distributed to decedent's legal heirs. Then, the court will appoint an executor or personal representative to manage and inventory all of the deceased person's assets.

Persons having priority to be appointed as personal representative are named in the decedent's will, then the surviving spouse and other legal heirs of the decedent. Notification of the estate and the appointment of the personal representative must be made to heirs and creditors. If the decedent was 55 years or older and resided in a medical institution at the time of death, the Nebraska Department of Health and Human Services must be given notification. Before distribution is made to the beneficiaries, the executor pays the deceased person's debts.

If the estate is insufficient to pay its debts, the debts will be paid in the order governed by Nebraska law, with priority given to the cost of probate administration,

funeral expenses, and taxes.

Probate can take six-12 months on average, and it can be costly.

The best way to avoid a probate is to set up a trust. A trust is an agreement where a trustee holds assets for the benefit of one or more beneficiaries. The trustee will administer the estate and distribute assets according to the trust document outside of court supervision. This process can be much more streamlined and take less time than a probate. Trusts can also be used to minimize federal estate tax liability. In 2024, the federal estate tax exemption is \$13.61 million but in 2026, the exemption is due to revert to its pre-2018 level of \$5 million, as adjusted for inflation. Trusts are beneficial to ensure that your long-term financial plans are implemented in order to protect and preserve your assets. Trusts also offer more privacy since they are not administered through probate.

Assets can also pass outside of a decedent's estate using beneficiary designations, such as naming the beneficiaries as payable on death recipients of a bank account or naming beneficiaries on an investment or retirement account.

It is important to consult with an estate planning attorney to help you decide the best option for you and your family.

This post was drafted [Amanda M. Barron](#), an attorney in the Omaha, Nebraska, office of Spencer Fane LLP. For more information, visit www.spencerfane.com.

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