My Drift

Title: Trust or Will?
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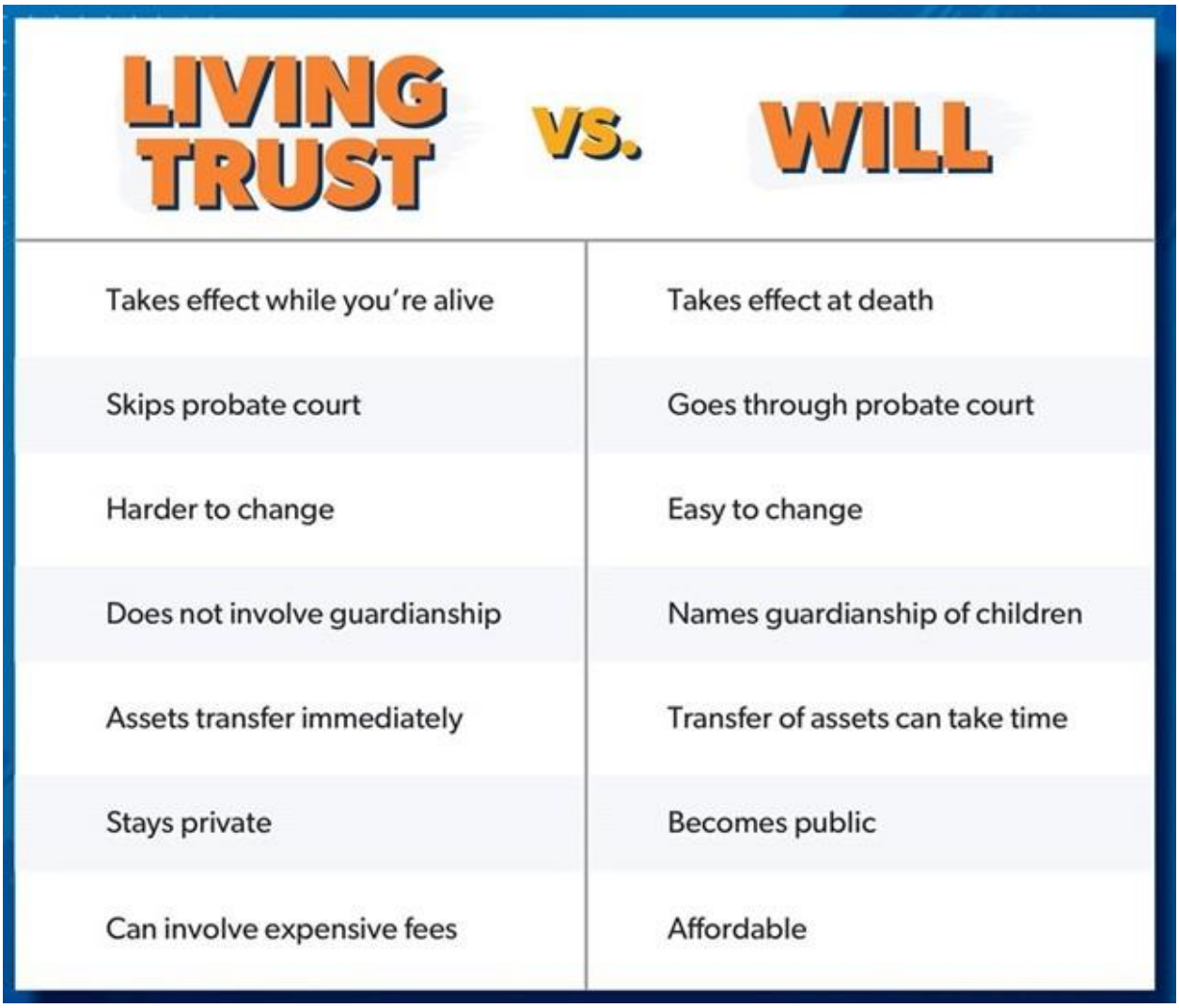
My wife recently died and I'm getting old. Some people have asked me if I have a trust or a will? Well, I have a will that I wrote myself back in July 1998. This will is outdated and needs to be updated. However, I'm being told that I should get a trust instead. I don't know anything about trusts, so I guess it is about time I did some research to determine exactly what I need before it's too late.

Do I need a living trust or should I just update my last will and testament and call it good? Or do I need both? Let's find out.

For all these years, I thought a will was all I needed. I planned to add one of my kids to the house title, my bank accounts, and my truck. That's pretty much all of my assets. But now I'm being told that is not enough to prevent probate.

The following chart provides the big picture with the primary differences between a trust and a will:



LIVING TRUST INFORMATION

What is a Living Trust?

A living trust holds the assets of the trust creator in a trust for his or her benefit during their lifetime. Then, upon the death of the trust creator, the assets are transferred to designated beneficiaries by the "successor trustee," the person who had been chosen by the trust creator to do so.

A living trust's terms can be changed at any time during the individual's lifetime, or the trust may be canceled entirely, which is why it's called revocable.

Why might you be interested in getting a living trust?

Here are the top benefits of a living trust:

1. A living trust avoids probate

Probate is the court-supervised process of distributing a deceased person's estate. Depending on the estate, as well as the assets and individuals involved in the state where you live, probate can become a lengthy and costly process, which may not only delay distributions to your beneficiaries but also cut down on what they inherit.

By placing your property in a living trust, however, you can avoid probate because the successor trustee distributes assets according to the trust creator's instructions without court intervention.

This can mean a faster distribution to your heirs—shortening the time frame from months or years to just weeks—without any additional expenses to the estate.

2. A living trust may save money

As described above, a living trust can save money by avoiding probate expenses at your death.

Regarding the initial cost, though, making a living trust is likely to be more expensive than creating a last will and testament. A living trust is a more complex legal document that requires more actions because you also must "fund the trust" with your assets, that is, transfer ownership of your property to the trust.

3. A living trust protects your privacy

A living trust is a private document between the parties involved and does not become part of the public record. In other words, no one can later go and search public records to find out more about the distribution of your estate.

A will, on the other hand, is Public Record, so everything in it becomes public as well.

4. A living trust assists in the event of incapacitation

If you become ill or incapacitated, the person you have chosen as successor trustee can step in and manage your affairs without the intervention of a court. In this way, you can avoid a court-appointed conservatorship for your affairs—the kind that Britney Spears' father famously had over his daughter's affairs.

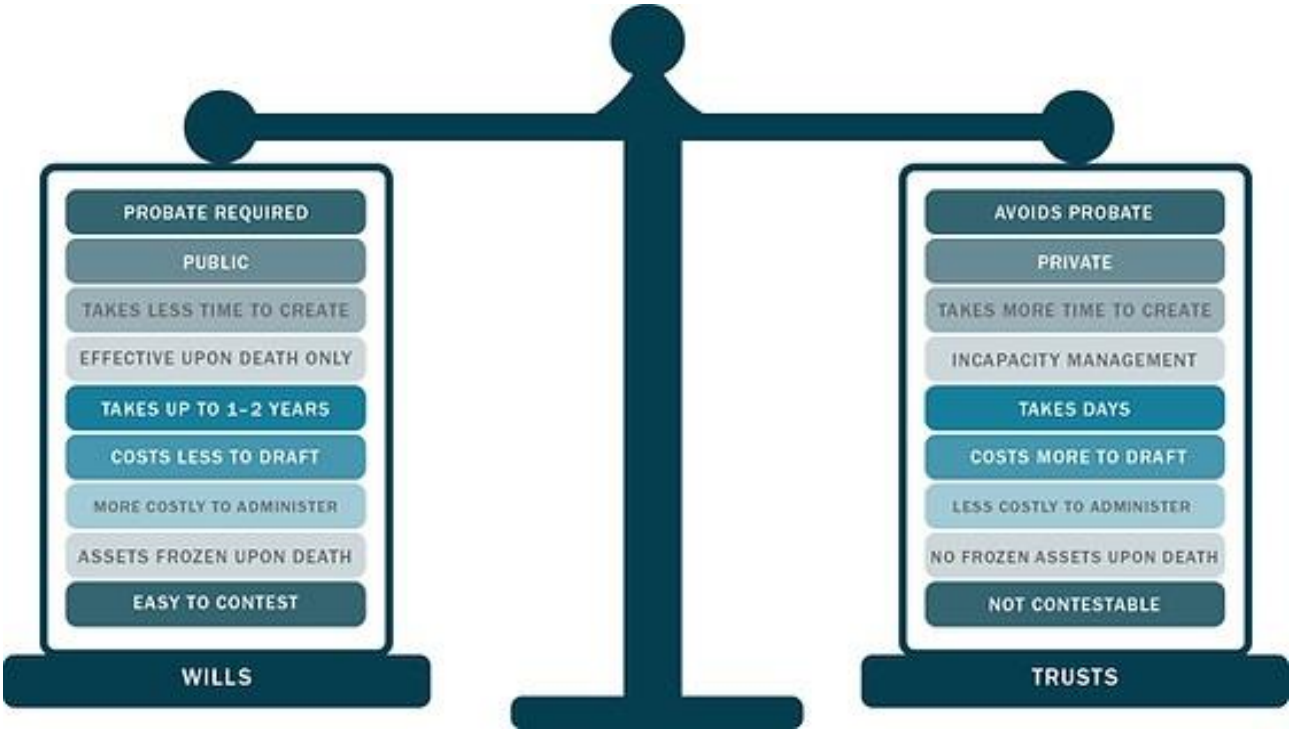
Moreover, since a living trust is revocable, you can dispute the implication that you are incapacitated and retain control of your own affairs.

5. A living trust provides certainty and peace of mind

When drawn up correctly, a living trust sets out a clear plan to deal with all of your assets. This can help prevent you from unintentionally disinheriting someone, can help you provide care for a loved one with special needs into the future, and even protect assets from certain people.

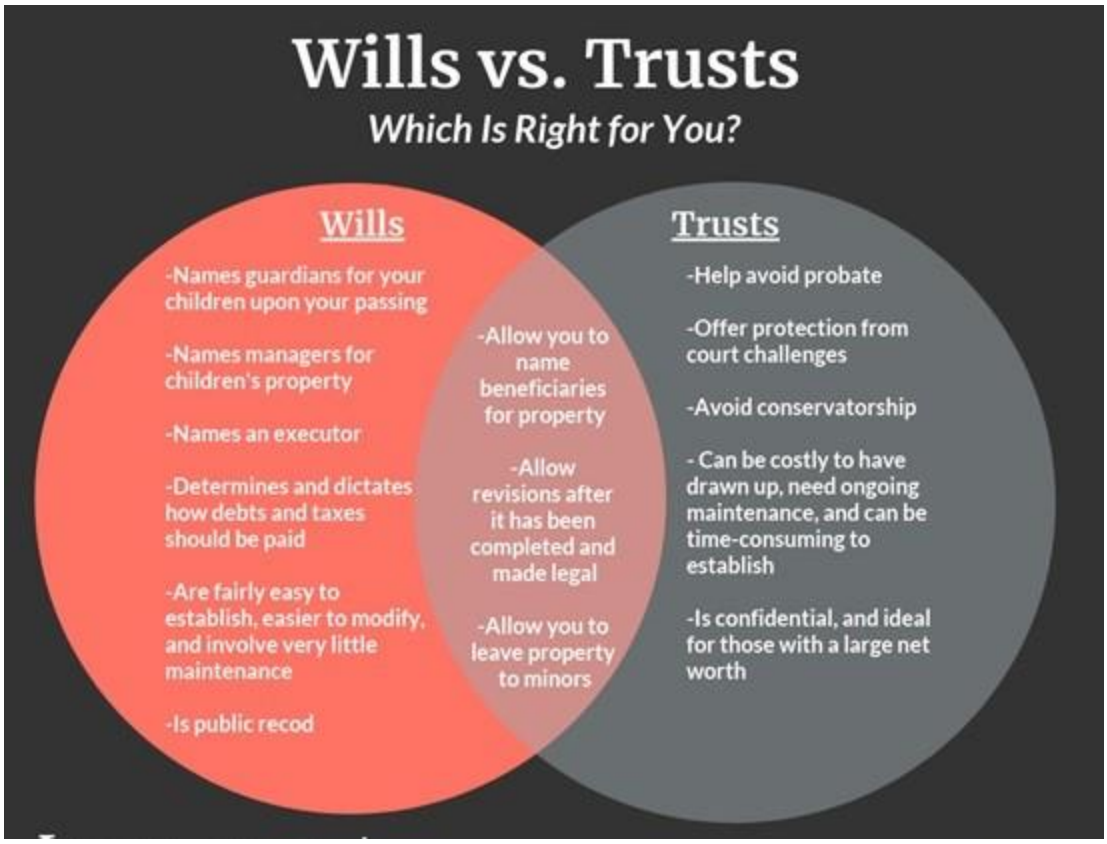
All of these things can give you peace of mind now, knowing that your estate will be handled exactly as you wish later. The existence of the trust can also provide certainty and comfort to your loved ones during an already stressful time because you've laid everything out for them.

Wills versus Trusts



Advantages of a Will

There are a few reasons people commonly choose to outline their plans in a last will and testament rather than a trust. A last will uses simple language and is less expensive than a trust during the planning period. Additionally, a will allows you to make changes without re-titling your assets at the bank.



In the above chart, note where wills and trusts overlap. These are the only benefits that are the same for both wills and trusts.

Well, it's now clear to me that a trust is much better than a will. It costs more but I think I need a trust. Do you agree?

Here is a quick recap of all 3 options:

What a Will Can Do

There are certain things that a will can do that a living trust cannot. When you construct a will, you can:

- **Name guardians for your children upon your passing**
- **Name managers for children's property**
- **Name an executor**
- **Determine and dictate how debts and taxes should be paid**

A living trust is not meant to do any of these things, and therefore won't.

What a Living Trust Can Do

On the flip side, there are things that you will need a living trust for. A will won't handle these things, but a living trust can:

- **Help avoid probate**
- **Offer protection from court challenges**
- **Avoid conservatorship**

What Both Can Do

Both a living trust and a will allow you to name beneficiaries for property. You can also revise each document after it has been completed and made legal. Both will allow you to leave property to younger kids, but a will may have some restrictions.

In Hawaii, If I Make a Living Trust, Do I Still Need a Will?

Yes, you'll still need a will. This might seem confusing—isn't the point of a living trust to avoid needing a will? Yes, it is, and your will might never be used. But you should still write one, for one or both of the following reasons:

- **Designating a guardian for minor children. You cannot use a trust to name a guardian for your minor children. For this reason alone, if you have minor children, you should write a will that names the guardian.**
- **Accounting for property that you have not transferred to your trust. It happens all the time—people create a trust and forget to formally transfer property to the trust (for example, they never get around to changing the deed on their house). Or, people buy or inherit property after they've set up their trust, and forget or don't know to take ownership as the trustee of their trust. Either way, the property will not**

be distributed according to the terms of the trust. You should have a will as a backup to dictate how assets that are not in the trust should be distributed.

If you don't have a will, any property that isn't transferred by your living trust or other method (such as joint tenancy) will go to your closest relatives as determined by Hawaii state law.

I have several questions. Let's try to get the answers.

Question #1.
I have a mortgage on my house. Can it be Placed in a Trust? So, how does this come into play with a mortgage?
The following answer comes from Rocket Mortgage:
A mortgage that you get on your house while you are living, and continue to pay off? You can fund your living trust by transferring ownership of your property into your living trust. In doing this, the rules of your living trust will apply to your real property, even if it has a mortgage on it.

This means that, upon your death, the real property will not pass through probate. Instead, your successor trustee will determine the appropriate distribution of the real property, even if it has a mortgage on it. Certainly, the mortgage will need to be paid off during the trust administration, but at least the cost and burdens of probate will be eliminated.

What if you don't own your home? Technically, even if your house is mortgaged, it is still owned by you, however, the mortgage is a loan that you pay back until the entirety of the loan is repaid. Many people believe that you can only put property into a trust that is completely paid for, however, this is not accurate. You are able to fund a trust with a mortgaged property, but in some cases, the bank will require prior notice. You should check with your lender. Additionally, in case you wish to refinance your currently mortgaged property, and if your property is already in your trust, your lender may first require that you take the property out of the trust. Once the refinance is complete, you can then fund the property back into the trust. This is accomplished with trust transfer deeds.

With that said, you can transfer property to a trust that has an existing mortgage, and it is in fact required to avoid probate, plan for incapacity and effectuate your wishes. Speaking to an estate planning attorney is crucial to understand your

situation, as well as the benefits of an estate plan, as it relates to a property that is mortgaged.

So, you have decided you may want to transfer your mortgage into your living trust for estate planning purposes. There are a few things to make sure to keep in mind:

1. You still have to pay your mortgage. Transferring this into a living trust does not negate that obligation. Your house is still subject to foreclosure if payments are not made. You are also unable to avoid any other debt on the house by putting it into the trust. All financial obligations are still valid and intact.

2. You cannot automatically take out a new loan or refinance the loan on a property that is in the trust. This is important in an age where interest rates can change, and property owners may want to refinance to secure a better rate. The housing market continues to ebb and flow, and as a property owner, you want to take advantage of the best interest rates possible. Many banks will not refinance your home if it is in a living trust. You may have to transfer the property out of the trust and back to the grantor before you can refinance. The good news is, once the refinancing is over, ownership can easily be transferred back into the trust. While the multiple transfers, cost, and time may add up, it is important to know that it is possible.

3. But it is still possible. The Federal National Mortgage Association has recently made changes in their guidelines. As a result, there are occasions in which the title transferring does not have to occur in order to refinance. For this to occur, there is criteria that must be met:

- ***You must create the trust during your lifetime.***
- ***The trust you create must be revocable.***
- ***You must remain a primary beneficiary of your revocable living trust throughout the entirety of your lifetime.***
- ***You must hold the position of trustee in your revocable living trust (though you may also name additional trustees).***
- ***The property in question, or at least a portion of the property in question, must constitute your primary residence or a second home.***
- ***The trust documents must provide the trustees with the authority to take out a mortgage on the property in the trust.***
- ***You must sign the promissory note for the mortgage or refinancing and must also sign the deed of trust and any riders of the promissory note or deed of trust which must indicate that the trust is liable for the debt and that the promissory note and deed of trust are given by the trust to secure the mortgage or refinancing in question.***

4. Transferring your property to a revocable living trust is not the same as selling or gifting the property or selling it to another individual. There is a "Due on Sale" clause that is in every mortgage agreement. This clause is not enacted with the transfer of a mortgage into a revocable living trust. As a result, your mortgage will not be due in full immediately upon transfer to the trust. If you were selling or gifting your property, it would be, making the two actions different in that way.

Trusts are usually thought of as something that is created while the grantor is living, and then enacted once their death. A living trust, however is slightly different. It is made and goes into effect during the lifetime of the trust maker. It is essentially a private contract between grantor and trustee.

Summary
A mortgage in trust may be something that you have never previously considered, but it may be appropriate. Anyone who owns property can put their mortgage in a revocable living trust so as to not deal with the probate process after death and utilize other estate planning benefits. You should discuss your situation with an estate planning attorney, who can determine if a revocable living trust and placing your mortgaged property within it is appropriate. While you may have to refinance your property later on down the line, you can still put your mortgage in trust in spite of that.

Question #2.
I have a Toyota Tundra truck. Should I put my truck in the Living Trust?

Just about every family owns a car; many families own more than one. You may have wondered whether your car should be owned by your revocable living trust or whether it should stay in your name. Or should it be in two names?

If you have a revocable living trust, should you transfer ownership of the car to your trust? No, it isn't necessary to do that. Hawai'i probate laws have a special rule concerning motor vehicles. A motor vehicle (car, truck, motorcycle, etc.) does not require you to go through probate at your death, no matter how much it is worth.

Question #3.
I have a bank savings and checking accounts plus a federal credit union savings account. What do I have to do to get these into my trust? Do I have access to my money?

The following answer comes from a Trust Attorney:

Assuming you are using your living revocable trust to avoid probate, the assets (which require your signature to transfer or sell) need to be "owned" by the trust. This includes checking and savings accounts, plus safe deposit boxes.

You should have a "Certification of Trust" or a summary of the trust that proves you established the trust. That summary is probably all you need to take to the bank, but just to be safe, take the complete trust.

If the accounts person knows what they are doing, they will have you simply fill out a new signature card for the account. The trust will be listed as the owner of the account. You will check the box or indicate that this is going to be a trust account, and you will sign your name with the designation "Trustee" after your name. If your spouse or someone else is also designated as a trustee, then they should sign the signature card as co-trustee. Of course, you would also be signing as co-trustee. The card should ask how many signatures are required on checks. You will usually only have one signature required.

Make sure you include all three parts of the trust's name: Name of trust, date the trust was established, and the name of the trustee (you).

The bank will ask for a Tax ID number for the trust. They want to know who is going to get the 1099 on the interest earned. The trust's tax ID is your Social Security number. Your trust is what the IRS calls a "grantor" trust. IT DOESN'T NEED AND SHOULDN'T GET A TAX ID NUMBER.

You should not need to give them two Social Security numbers, if there are two trustees. Who will pay the tax? Just one of you needs to pay the tax.

If the account's person has no clue what they are doing, ask to talk to the bank's attorney. One credit union insisted on a Tax ID for the trust. We couldn't convince them otherwise. We moved $1.5 million to another credit union that understood about trusts.

You shouldn't have to print new checks. Just use the old ones. The account number shouldn't change, so the old checks should still work.

If the bank doesn't like the Certification of Trust they may take a copy of the trust. They usually only copy the first couple of pages in addition to the trustees sections,

the powers of trustees, and the signature page (which is what the Certification of Trust contains). They need to establish the trust is real, who the successor trustees are and what their powers are. They will keep the copy in your file at the bank. That way they know what to expect after you die and are no longer the acting trustee.

Should I put all my bank accounts into my trust?
Not all bank accounts are suitable for a Living Trust. If you need regular access to an account, you may want to keep it in your name rather than the name of your Trust. Or, you may have a low-value account that won't benefit from being put in a Trust.

Now I'm not sure about my checking account and my debit card. This is what I use to pay my bills and live on. Need more information on this.

The savings accounts and safe deposit box should be handled about the same way. If you don't have a problem with the checking account, the savings and safe deposit box will go down easily.

Question #4.
I also have two credit cards (one from the bank and one from my credit union). Do these go into the trust? How do credit cards work with a living trust?

The only transfers that are to be made to a Revocable Living Trust are assets, not liabilities. Debt that has been incurred by you or the family is not transferred to the Trust; however, the provisions are included in your trust to permit the transfer of certain assets with the debt attached.

Active financial accounts. It is not advisable to transfer accounts you use to actively pay your monthly bills unless you are the trustee and granted full control of the trust assets. For many people, it is simply easier to keep these accounts out of the trust. Clients are often concerned about keeping a working bank account separate from the trust because of the potential for lengthy probate and the inability to quickly convey these funds to heirs. This is where designating beneficiaries comes in handy. When you opened your checking or savings account, your financial institution or bank may not have asked you to select a beneficiary when you signed the signature card. Review these accounts for a payable-on-death (POD) option that allows you to add primary and secondary beneficiaries.

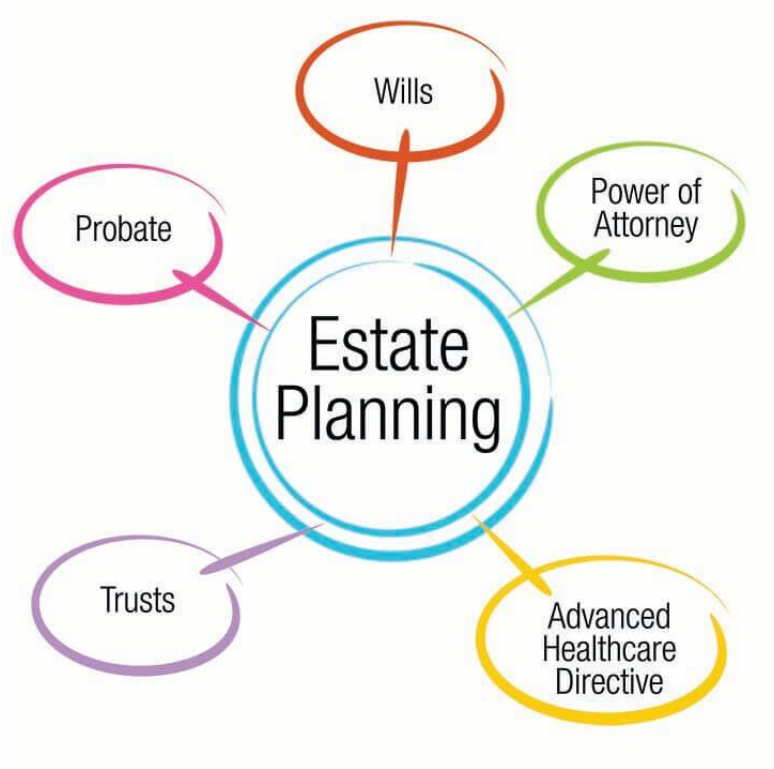
How Do I Make a Living Trust in Hawaii?

To make a living trust in Hawaii, you:

1. **Choose whether to make an individual or shared trust.**
2. **Decide what property to include in the trust.**
3. **Choose a successor trustee.**
4. **Decide who will be the trust's beneficiaries—that is, who will get the trust property.**
5. **Create the trust document. You will probably need help from an attorney.**
6. **Sign the document in front of a notary public.**
7. **Change the title of any trust property that has a title document—such as your house—to reflect that you now own the property as trustee of the trust.**

Estate Planning

Estate planning covers any decisions regarding money, property, medical care, dependent care, and other matters that can arise when a person dies. The biggest benefit of estate planning is peace of mind—you'll know your wishes will be fulfilled for the benefit of your loved ones.



Types of Power of Attorney

You've probably heard the term "power of attorney" (POA) many times over the years. The question is: Do you need a POA? I think the answer is yes for me.

We all try to be prepared for anything and to be in a position to take care of our family and loved ones. But sometimes, things happen that make it impossible to manage our affairs or make important decisions. It's in those situations that a POA can help.

Simply put, it's a legal document that gives someone else the power to make decisions for you, as your agent. And in the case of medical power of attorney, your agent can even make important healthcare decisions on your behalf. POAs are powerful documents that can have a profound impact on your family, your money, and your health.

Here are the four different types of power of attorney: Limited; General; Durable; and Springing.

1. The Limited Power of Attorney

As the name implies, these POAs are for when you need someone to do things for you for a limited purpose. For that reason, these documents usually specify a date and time period after which the POA ends.

For example, an author might use a limited POA so that their book agent could cash checks made payable to the writer during a specified time. That way, the agent could take their commissions out of the author's check and write a new check to the writer.

Or let's say you had plans to go on a vacation on the same day that the deed for your new house needs to be signed. You could assign a limited POA to someone else for that function that only lasted for one day.

2. The General Power of Attorney

Not surprisingly, a general POA is more comprehensive. This essentially assigns all of your powers and rights to someone else. A general POA can also be used when people don't have the time, skills, or desire to handle financial matters. Unless you choose to revoke a general POA, it applies as long as you're alive, or until you become incapacitated.

There are many uses for a general POA, like:

- **Collecting debts**
- **Applying for government benefits**
- **Managing financial and business matters**
- **Buying, selling or making investments on your behalf**
- **Filing lawsuits on your behalf**

3. The Durable Power of Attorney

The major difference between the general and durable POA is that the durable version lasts even if the assignor becomes incapacitated. In other words, you'd use a durable POA if you wanted to give your agent authority once you're unable to act for yourself. Because of this, many consider a durable POA to be the most powerful type of power of attorney.

One example may be if you've been diagnosed with early-onset Alzheimer's.

4. The Springing Power of Attorney

This type of POA serves roughly the same purpose as a durable POA, but it only comes into effect once a specific event happens, such as when the assignor becomes incapacitated. With these types of POAs, it's very important to clearly define what "incapacitated" means.

What's the difference between a durable and non-durable power of attorney?
The main difference is that durable POAs can apply as soon as they're signed and also when the assignor eventually becomes incapacitated. We should note that when the assignor passes away, any type of POA they assigned becomes void.

Advanced Healthcare Directive

What is the purpose of the advance healthcare directive?

An advance directive, sometimes called a "living will," is a written document that tells your health care providers who should speak for you and what medical decisions they should make if you become unable to speak for yourself.

Here is what I think I need to do:

- **Get an individual revocable trust.**
- **Put the following assets in it: My house and savings accounts.**
- **Keep my checking account out of trust. Use to pay bills and my debit card for daily expenses.**
- **Name one of my kids as my successor trustee.**
- **Name my three kids as the trust's beneficiaries.**
- **Update my Last Will and Testament. Cover items not included in the trust like my truck.**
- **Decide who gets what from trust and the will.**
- **I need to give the Power of Attorney to my successor trustee.**
- **Review and maybe update my Advance Healthcare Directive.**
- **Hire a trust attorney to answer my questions and draw up the required documents.**

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