Knowledge Center Guide

Do I Need a Will or a Trust in North and South Carolina?

Quick Summary

- A will-based estate plan (simpler estates)
- A trust-based estate plan (larger or more complex estates)
- Or both documents working together

Do Most People Need a Will or a Trust?

Most people need both a will and other estate planning documents, and some families benefit from a revocable living trust. A will ensures that your wishes are followed and allows you to name guardians for minor children. A trust can help avoid probate, provide privacy, and manage assets if you become incapacitated.

A guide for individuals and families deciding how to structure their estate plan.

One of the most common questions people ask when beginning the estate planning process is a simple one: Do I need a will, or do I need a trust? The answer depends on your assets, your family situation, your privacy concerns, and what you want to happen when you pass away — or if you become incapacitated before then.

Both wills and trusts are essential estate planning tools, but they work differently and serve different purposes. In many cases, the right answer is not one or the other — it is both. This guide explains what each document does, how they compare, and how the laws in North Carolina and South Carolina affect which approach makes the most sense for your situation.

Estate planning attorneys frequently help individuals and families in North and South Carolina design estate plans tailored to their goals — whether that means a straightforward will, a comprehensive trust-based plan, or a combination of both.

Quick Comparison: Will vs. Revocable Living Trust

Feature	Will	Revocable Living Trust
Goes through probate?	Yes	No
Takes effect	At death only	Immediately upon signing
Privacy	Public record (probate)	Private
Works if incapacitated?	No	Yes — successor trustee steps in
Cost to create	Lower upfront	Higher upfront
Can be changed?	Yes, while living	Yes, while living

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Names guardian for minor children?	Yes	No (need a will too)
Controls all assets automatically?	Only probate assets	Only assets transferred into it

What Is a Will?

A last will and testament is a legal document that expresses your wishes for how your property should be distributed after your death. It can also name a guardian for any minor children and designate an executor — the person responsible for carrying out the terms of the will and managing your estate through the legal process.

A will only takes effect at your death. It has no power during your lifetime, and it does not protect you if you become incapacitated. It must go through probate — the court-supervised process of validating the will and distributing your estate — before your beneficiaries receive anything.

What a Will Can Do

- Direct who receives your property after death
- Name an executor to manage your estate
- Name a guardian for minor children — one of the most important functions a will serves for parents
- Specify your wishes for funeral and burial arrangements
- Provide instructions for the care of pets
- Establish testamentary trusts (trusts created at death) for minor or special needs beneficiaries

What a Will Cannot Do

- Avoid probate — all assets passing under a will must go through the probate process
- Control assets that pass by beneficiary designation (life insurance, retirement accounts, POD accounts)
- Protect your estate or provide management of assets if you become incapacitated before death
- Provide privacy — wills filed in probate become public record

> **Important:** Even if you have a trust, you still need a will. A “pour-over will” captures any assets that were not transferred into your trust during your lifetime and directs them into the trust at your death. Without a will, those assets may be distributed under state intestacy laws rather than according to your wishes.

What Is a Revocable Living Trust?

A revocable living trust (sometimes called a “living trust” or “inter vivos trust”) is a legal arrangement in which you place and hold assets in the trust so it can manage them during your lifetime. You typically serve as the trustee of your own trust, maintaining full control over your assets. You name a successor trustee — a person or institution — to manage and distribute the trust assets if you become incapacitated or when you die.

Because assets held in a revocable living trust are owned by the trust — not by you individually — they do not go through probate when you die. This is the primary practical advantage of a trust over a will.

What a Revocable Living Trust Can Do

- Transfer assets to beneficiaries at death without going through probate
- Provide for management of your assets if you become incapacitated, without the need for a court-appointed guardian or conservator of the estate
- Keep the details of your estate private — unlike a will, a trust is not filed with a court and does not become public record
- Coordinate the distribution of assets across multiple states (avoiding ancillary probate if you own property in more than one state)
- Provide ongoing management of assets for beneficiaries who are minors, have special needs, or need structured distributions
- Trust-based planning can be structured to help reduce estate taxes for larger estates when combined with appropriate tax planning strategies

What a Revocable Living Trust Cannot Do

- Name a guardian for your minor children — you still need a will for this
- Automatically protect assets from creditors during your lifetime — because it is revocable, you still legally control the assets
- Cover assets that are never transferred into the trust — a trust only controls what is actually titled in the trust’s name
- Replace all other estate planning documents — you still need a will, a financial power of attorney, and a healthcare directive for a complete plan

> ***Note:*** *A trust is only effective for assets that have been properly transferred into it. This process — called “funding” the trust — requires retitling bank accounts, investment accounts, and real estate into the trust’s name. A trust that is never funded provides little benefit over a will.*

Wills and Trusts in North Carolina

Will Requirements in North Carolina

To be valid in North Carolina, a will must generally meet these requirements:

- The person making the will (the “testator”) must be at least 18 years old (or be an emancipated minor or a member of the armed forces)
- The testator must be of sound mind at the time the will is signed
- The will must be in writing

- The will must be signed by the testator (or by someone else at the testator's direction and in their presence)
- The will must be witnessed by at least two competent witnesses who sign in the testator's presence

North Carolina also recognizes holographic wills — wills that are entirely handwritten and signed by the testator, without witnesses. However, holographic wills can be more easily challenged and are generally not recommended as a substitute for a properly witnessed will.

Probate and Wills in North Carolina

In North Carolina, a will must go through the probate process administered by the Clerk of Superior Court in the county where the deceased resided. The probate process validates the will, authorizes the executor to act, allows creditors to make claims, and ultimately supervises the distribution of the estate to beneficiaries.

Many straightforward NC estates take approximately 9 to 18 months to complete, although smaller estates may close more quickly. For families with modest, well-organized estates and no real estate held solely in the decedent's name, a simple will may be entirely sufficient. For families with more complex situations — larger estates, real estate in multiple states, a desire for privacy, or beneficiaries who need ongoing management — a trust-based plan often makes more sense.

Trust Planning in North Carolina

North Carolina has adopted a version of the Uniform Trust Code, which provides a comprehensive legal framework governing the creation, administration, and termination of trusts. This means that trusts created in NC have strong legal backing and well-defined rules for how trustees must act.

Revocable living trusts are widely used in North Carolina as a probate-avoidance tool. When properly funded, a trust allows the successor trustee to distribute assets to beneficiaries after death without the need for formal probate administration in court — which can save months of time and meaningful expense compared to the probate process.

Who Should Consider a Trust in North Carolina?

A revocable living trust is particularly worth considering in North Carolina if you:

- Own real estate in more than one state (avoiding ancillary probate in each state)
- Have a blended family or complex beneficiary relationships where privacy and control over distributions matter
- Want to provide for an incapacitated spouse or a child with special needs
- Have a closely held business interest that needs a smooth transition plan
- Want to avoid the time and cost of probate for your family
- Have a larger estate where tax planning strategies may be beneficial

For individuals with simpler estates — a home, modest savings, and straightforward family relationships — a well-drafted will combined with proper beneficiary designations may accomplish most of the same goals at lower upfront cost.

Dying Without a Will in North Carolina

If you die without a valid will in North Carolina, your estate is distributed according to the state's intestate succession laws, which follow a fixed formula regardless of your actual wishes. In North Carolina, the intestate rules can produce outcomes many people do not intend. For example:

- If you die leaving a spouse and children from that marriage, your spouse and children share the estate — your spouse does not automatically receive everything.
- If you die leaving a spouse and children from a prior relationship, your children from the prior relationship are entitled to a share, which may significantly reduce what your spouse receives.
- If you have no surviving spouse or children, the estate passes to parents, then siblings, and then more distant relatives — meaning an unmarried partner or close friend would receive nothing regardless of your wishes.

North Carolina's intestacy laws also have no mechanism for naming a guardian for your minor children. If you die without a will naming a guardian, the court will decide who raises your children.

> **NC Planning Tip:** Even a basic will is far better than no plan at all. If you are in North Carolina with young children, a will naming a guardian is one of the most important documents you can have in place.

Wills and Trusts in South Carolina

Will Requirements in South Carolina

South Carolina has adopted the Uniform Probate Code framework for wills. To be valid, a will in South Carolina must generally:

- Be made by a person who is at least 18 years old and of sound mind
- Be in writing
- Be signed by the testator (or by someone else in the testator's presence and at their direction)
- Be witnessed by at least two individuals who sign within a reasonable time after witnessing the signing

South Carolina does not recognize holographic (handwritten, unwitnessed) wills in the same manner as North Carolina — a will without proper witnesses is generally not valid under SC law. This makes it especially important to have wills professionally drafted and executed.

Probate and Wills in South Carolina

In South Carolina, wills are probated through the county Probate Court, which is a dedicated court with an elected judge — unlike North Carolina, where the Clerk of Superior Court handles probate. South Carolina's probate process includes an 8-month creditor claim period, which means most SC estates take 12 to 18 months to close even when there is no dispute, because South Carolina law allows creditors eight months to present claims.

This longer timeline is one reason many South Carolina families choose to incorporate a revocable living trust into their estate plan — assets held in a properly funded trust bypass the

Probate Court entirely and can be distributed to beneficiaries in a matter of weeks rather than months.

Trust Planning in South Carolina

South Carolina has also adopted the Uniform Trust Code, providing a strong legal foundation for trust planning. Revocable living trusts are frequently used in SC for the same reasons as in NC: probate avoidance, privacy, and incapacity planning.

One additional consideration in South Carolina is that the state imposes a probate court filing fee based on the value of the probate estate. A trust reduces the probate estate and therefore may reduce these fees, in addition to avoiding the time and process costs of probate.

Who Should Consider a Trust in South Carolina?

A revocable living trust deserves serious consideration in South Carolina if you:

- Want to avoid the 8-month creditor claim period and the associated delay in distributing assets to your family
- Own real estate in more than one state
- Want to keep the details of your estate private
- Have a blended family, a special needs beneficiary, or other circumstances where customized distribution instructions are important
- Are concerned about the cost and time associated with full probate administration
- Want seamless management of your assets if you become incapacitated

For smaller, simpler SC estates — especially those where most assets already pass outside of probate through beneficiary designations — a will combined with proper account titling may be sufficient.

Dying Without a Will in South Carolina

Like North Carolina, South Carolina's intestate succession laws will govern the distribution of your estate if you die without a valid will. The results can be unexpected:

- If you die leaving a spouse and children, the estate is divided equally among them — your spouse does not automatically receive everything, and your children receive equal shares alongside your spouse.
- If you have no spouse or children, the estate passes to parents, then siblings, then more distant relatives.
- An unmarried partner, close friend, or favored charity will receive nothing under intestacy laws, regardless of your relationship or intentions.

South Carolina's intestacy laws also provide no mechanism for naming a guardian for minor children. Without a will, that decision rests entirely with the court.

> **SC Planning Tip:** South Carolina's 8-month creditor period means that even a simple probate estate will be open for well over a year. If providing your family with a quicker, smoother transition is a priority, a trust-based plan is worth discussing with an attorney.

NC vs. SC: Key Differences for Will and Trust Planning

Holographic Wills

North Carolina recognizes holographic (handwritten, unwitnessed) wills, though they are not recommended for most situations. South Carolina generally does not recognize holographic wills — a will without proper witnesses is typically invalid.

Probate Court

North Carolina probate is handled by the Clerk of Superior Court. South Carolina has a dedicated Probate Court with an elected judge in each county. Both processes require similar steps, but the SC court system is a distinct judicial body with its own procedures.

Creditor Claim Period

North Carolina's creditor claim period is 90 days from publication. South Carolina's is 8 months. This difference means that a trust-based plan has a relatively larger time-saving benefit in South Carolina than in North Carolina.

Will Execution Requirements

Both states require two witnesses for a valid will. SC's requirements are slightly stricter in that it does not recognize unwitnessed holographic wills.

Trust Law Framework

Both NC and SC have adopted the Uniform Trust Code, so the legal framework for creating and administering trusts is similar in both states. A trust properly drafted in one state will generally be recognized in the other.

When Do You Need Both a Will and a Trust?

The answer, for most people with a meaningful estate, is: both. A revocable living trust handles the bulk of your estate — avoiding probate, providing for incapacity, and keeping distributions private. But a will remains essential even with a trust in place, for several reasons:

- A "pour-over will" captures any assets that were not transferred into your trust during your lifetime and directs them into the trust at death, so nothing falls through the cracks.
- A will is the only place to name a guardian for your minor children. A trust cannot do this.
- A will covers assets that pass through probate — such as property acquired close to death that was never retitled into the trust.

Think of the will and trust as complementary documents, not competing ones. The trust does the heavy lifting for most of your estate. The will serves as a safety net and handles what the trust cannot.

Other Documents Every Estate Plan Should Include

Whether you choose a will-based plan, a trust-based plan, or a combination, a complete estate plan in NC or SC should also include:

- Durable Financial Power of Attorney — names someone to manage your finances if you become incapacitated

- Healthcare Power of Attorney / Healthcare Proxy — names someone to make medical decisions on your behalf
- Advance Directive / Living Will — states your wishes regarding life-sustaining treatment and end-of-life care
- HIPAA Authorization — allows designated individuals to access your medical information

These documents do not replace a will or trust, but they are essential components of a plan that protects you during your lifetime as well as your family after your death.

Ready to Start Your Estate Plan?

Whether you are putting together your first will, considering whether a trust is right for your situation, or updating an existing plan after a major life change, the decisions you make now will have a lasting impact on your family.

If you have questions about wills, trusts, or estate planning in North Carolina or South Carolina, our attorneys are available to help you understand your options and develop a plan tailored to your goals and your family's needs.

► Schedule a Consultation

Related Knowledge Center Guides

- What Happens If You Die Without a Will?
- What Should Be Included in an Estate Plan?
- Revocable Living Trusts Explained
- Irrevocable Trust Strategies
- Special Needs Trust Planning
- How Probate Works in North and South Carolina
- Executor Duties and Responsibilities
- Medicaid Planning Basics

This guide is intended for general educational purposes only and does not constitute legal advice. Laws and procedures may change, and every situation is unique. Please consult a licensed attorney in North Carolina or South Carolina for guidance specific to your circumstances.

When a Will May Be Enough

- You have modest assets
- You own property in only one state
- You have straightforward beneficiary plans
- You are comfortable with the probate process
- You do not require ongoing trust management

Frequently Asked Questions

Is a will enough, or do I need a trust?

For many people with straightforward estates and no out-of-state real estate, a well-drafted will combined with proper beneficiary designations is entirely sufficient. A trust becomes more valuable when you want to avoid probate, need to plan for incapacity, own property in multiple states, have a blended family, or want to keep your estate plan private. An attorney can help you assess which approach fits your situation.

How much does it cost to create a will versus a trust?

A simple will generally costs less to draft than a revocable living trust. However, a trust can save your family significantly more in probate costs, time, and attorney fees after your death — especially in South Carolina where the probate process is lengthier. The right comparison is not just the upfront drafting cost, but the total cost and burden to your family over time.

Can I write my own will in North Carolina or South Carolina?

Technically yes, but it is rarely advisable. In NC, a handwritten holographic will is recognized but can be more easily challenged. In SC, an unwitnessed handwritten will is generally not valid at all. Errors in execution, ambiguous language, or failure to account for all assets can invalidate a will or create costly disputes. A professionally drafted will is a small investment that can prevent significant problems.

Does a trust avoid estate taxes?

A revocable living trust on its own does not reduce estate taxes — because you retain control over the assets, they are still included in your taxable estate. However, more advanced trust structures, such as irrevocable trusts, can be used as part of a tax planning strategy for larger estates. If your estate may be subject to federal or state estate taxes, an attorney can discuss strategies designed to minimize that exposure.

What happens to my trust when I die?

When you die, your revocable living trust becomes irrevocable — meaning it can no longer be changed. Your successor trustee steps in to manage and distribute the trust assets according to the instructions you set out in the trust document. This process happens privately and outside of court, which is one of the primary advantages of a trust over a will.

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