

Do I Need a Trust to Avoid Probate?

As the bluebonnets bloom and Texans shake off the last of winter, many of my clients come in with a similar question during this season of renewal:

“Do I need a trust to avoid probate?”

It's a good question—one worth planting firmly in the soil of good legal advice. And like most things in estate planning, the answer depends on your goals, your assets, and, well, your roots. And, an estate plan is an intensely personal decision. You should make a plan that gives you peace as to what will happen to your assets after death.



Probate in Texas: Not as Thorny as You'd Think

In other states, the word probate may conjure images of drawn-out court processes, legal fees sprouting like weeds, and paperwork piling up like fall leaves. But in Texas? We do things a little differently. Texas has one of the most efficient probate systems in the country, thanks to:

- Independent Administration, which minimizes court involvement.
- Muniment of Title, a quick route when the will is valid and no administration is needed.
- Small Estate Affidavits, perfect for modest estates (under \$75,000, excluding homestead).
- Affidavits of Heirship, a document that can pass real estate to heirs without court involvement.

These tools make Texas probate more like pruning a bush than felling a tree. But, you should always remember that there are significant costs associated with

probate. Many people never consider these hidden costs when planning their estate.

The Trust: A Tool, Not a Necessity

Creating a Revocable Living Trust is often pitched as a must-have for avoiding probate. And while it can be a beautiful part of your estate plan, it's not the only flower in the garden.

Why you might plant a trust:

- Keeps your affairs private (unlike wills, which become public record).
- Helps manage assets if you become incapacitated.
- Avoids probate in multiple states if you own out-of-state property.
- Offers control over how and when heirs receive their inheritance.
- Minimizes the opportunity for family conflict.

But be mindful:

Trusts cost more to establish than wills on the front end. At my office we strive to give clients a clear picture of the total cost of an estate plan. But, because trusts involve more attorney time at the outset, the cost is going to be higher in the beginning. Often, though, the total cost of the plan is going to be less than or equal to traditional planning methods.

And, you must fund them—meaning, move your assets into the trust. Probate can only be avoided if the probate assets are placed in the trust. While a trust-based plan will work to accomplish your goals from the outset, it will not work most-efficiently and avoid probate unless it is funded.

So yes, a properly-funded trust avoids probate—but in Texas, it is not the only way to skip probate.

Alternatives That Blossom Without Probate

A trust is not the only way to avoid probate. In certain situations a combination of simple planning techniques can get the job done if your only goal is skipping probate:

- Beneficiary Designations – For retirement accounts, life insurance, and bank accounts with POD (Payable-on-Death) instructions.
- Transfer-on-Death Deeds – Real estate that passes without probate.
- Lady Bird Deeds – A Texas special! Let property pass automatically while keeping control during life.
- Joint Ownership with Right of Survivorship – Your share of property passes directly to the surviving owner.

These options can create a bouquet of non-probate transfers—no trust required. But, again, going this route has costs that must be considered. Informal plans come with the significant risk that one or more of the transfers may fail if your family has changed between your designation and death.

When a Trust Is Worth Planting

While probate avoidance might not be essential in Texas, there are many strong reasons to plant a trust anyway—especially when you want more structure, privacy, and control over your legacy. Here are more situations where a trust really shines:

- Blended Families – A trust can ensure your assets are fairly divided between your current spouse and children from a previous relationship, helping avoid conflict and unintentional disinheritance.
- Privacy – Wills go through probate and become public record. Trusts are private documents, which can be important for those who value discretion.
- Long-Term Control – Want your children to inherit at age 30 instead of 18? Want to stagger distributions over time or tie them to life milestones? A trust makes that possible.

- Asset Protection for Beneficiaries – A properly designed trust can help shield inheritances from a beneficiary's creditors, lawsuits, or divorce proceedings.
- Incapacity Planning – A trust allows your chosen trustee to seamlessly manage your assets if you become incapacitated—no need for court intervention or guardianship.
- Special Needs Planning – A Special Needs Trust protects eligibility for government benefits while still providing for a disabled loved one.
- Real Estate in Multiple States – Probate is required in every state where you own property. A trust consolidates everything and avoids multiple probate cases.
- Avoiding Family Conflict – Trusts can reduce the likelihood of disputes, especially when accompanied by a clear trustee and a no-contest clause.

And, these are not even close to all the ways a trust can help accomplish your goals. In short, a trust isn't just about avoiding probate—it's about growing a plan that lasts beyond the season and adapts to life's storms.

A Final Word on Avoiding Probate

As you spring clean your finances, don't forget your estate plan. You may not need a trust to avoid probate in Texas, but that doesn't mean you don't need a plan at all. A thoughtfully chosen mix of tools can offer clarity and comfort for the people you love most. As an experienced estate planning attorney, I am here to assist you in navigating these choices so that you can do what is best for your family. A primary focus of my firm is ensuring that our clients make purposeful choices of how and when their property passes to loved ones. If you need clarity, call me at 281-425-1300 to schedule your planning session today, so you can experience the peace of knowing your loved ones are protected. I'm here to help you grow peace of mind that lasts well beyond the season.

—By Marc Pinney