

Wills and Lifetime Trusts Comparison Matrix

	Wills	Intervivos Trusts (Lifetime)
Formation		
Beneficiaries	Persons, Pets or Charities permissible	Persons, Pets or Charities permissible
Guardian for Minors	Can name guardian for children	Cannot name guardian for children
Notarization	Best practice is to notarize	Best practice is to notarize
Witnesses	Requires 2 witnesses	Witnesses not required
Fiduciary Requirement	Executor or Personal Representative must be named, whether a family member or professional	Trustee must be named, whether a family member or professional
Fiduciary Safeguards	Can require accounting to beneficiaries	Can appoint a trust protector to monitor and require accounting to beneficiaries.
Name Executor	Can name executor over burial, deceased person's taxes, debts, etc.	Cannot name executor over non-trust property or non-trust matters
Lifetime Protection		
Conservatorship during lifetime of will/trust maker	Cannot help to avoid conservatorship over will maker if financial decisions are needed	Helps to avoid conservatorship over trust maker as regards the trust property
Medicaid Protection	Can protect some assets from Medicaid if will has a testamentary supplemental needs trust embedded inside of it.	Can protect from Medicaid if trust is irrevocable and meets legal requirements.
Asset protection for will/trust maker	No asset protection for will or trust maker	Asset Protection available if trust meets statutory requirements.
Asset protection for beneficiaries	No asset protection for children unless the will has a testamentary trust embedded inside.	Asset protection for children can be planned for in trust.
After Life Administration		
Dispute prevention	Required Probate court hearings can encourage disputes	Lack of court hearings helps to avoid disputes
Privacy in administration	Public record when probated	Private during administration
Court Probate Requirements	Probate required to be filed in court if estate has real estate or > \$100K	No Probate required if real property transferred to trust before death.
Tax Considerations		
Tax - Capital Gains	Basis step-up certain,	Basis step-up can be planned for with grantor trust provisions
Tax - Federal Estate and GST Taxes	Estate tax cannot be reduced, but exemption can be maximized with a testamentary A/B trust arising from the will.	Estate tax liability can be reduced with planning, valuation, and transfer techniques
Tax - Federal Income Taxes	No federal income tax reduction	Federal income taxes can be reduced for some transactions with distributions to lower-bracket beneficiaries
Tax - State Income Taxes	No state income tax reduction	State income taxes reduced for some transactions with planning

Disclaimer and Warning:

This resource applies only to **Utah law**. If you have any questions, you should review your issues with an attorney or other professional. If this does not suit your situation or is incorrectly applied, you may cause harm to yourself and others. **Use this resource at your own risk.**

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