

## Will or trust? Understanding the differences

By CANDICE CHOI (AP) – Jul 3, 2009

NEW YORK (AP) — One of the big mysteries in the chaotic days following Michael Jackson's death was whether he left behind a will.

After initially stating the entertainer likely died without one, the superstar's family reversed course and produced a 7-year-old will this week.

The five-page document filed in court simply transferred Jackson's estate into a family trust, leaving a slew of questions unanswered about the King of Pop's finances.

The setup is common in California and numerous other states, where trusts are used in place of wills partly as a way to avoid court proceedings and keep financial matters private. There are other reasons to set up a trust rather than a will.

A will generally spells out a one-time distribution of assets, while a trust can stipulate that assets are distributed over time. So if you have young children, a trust could see that they get their inheritance in installments upon certain milestones, such as a birthday, graduating college or marriage.

Here are some common questions and answers about wills and trusts.

Q: What goes into setting up a will or trust?

A: There are no additional fees or filings that come with drawing up a trust. But it will likely be more complicated, and therefore more expensive, than drawing up a will.

Costs vary widely depending on the size and complexity of the estate, but attorneys could charge up to several thousands of dollars for either document. For the most basic estates, a will could cost around \$500, said Steve Akers, managing director of Bessemer Trust Co. a wealth-management firm in New York City.

Once the document you pick is drawn up, be sure to let family members or those named in the trust or will know where to find it. Anybody who has possession of your will — often your attorney — is obliged to file it in court upon your death.

It's common to leave copies of trusts with your attorney or designated trustees, said Akers, who is also chairman of the real property, trust and estate law division at the American Bar Association.

Q: What role does the court play in either scenario?

A: One common reason for setting up a trust, rather than a will, is to avoid court proceedings.

Wills must be filed in a probate court to be executed, meaning they become public documents. Depending on where you live, court proceedings can be costly and time-consuming, sometimes taking as long as a couple years.

"The length can vary dramatically from state to state. In some states, it can require several trips to court and the filing of numerous documents," Akers said.

Administrative court fees come out of the estate; costs can be between 1 percent and 3 percent of the estate.

The use of a will is more common in states with simpler court procedures, where hearings can be as quick as 15 minutes. This usually requires the presence of only one person close to the deceased, often the executor of the will or a family member.

With a trust, your assets are simply transferred to the designated trustee (or trustees) upon your death. A brief "pour-over will" usually declares that any remaining assets be transferred into the trust upon your death. This was what happened in Jackson's case.

You can also set up a "trust within a trust" or a trust within a will, usually for a single beneficiary.

Q: Who's responsible for overseeing my will or trust?

A: An executor you name carries out the contents of a will. A trustee plays a similar role, but usually for a much longer time — typically until all assets are distributed to the beneficiaries. A bank or financial institution might be named to act as a co-executor or co-trustee.

A trustee is also usually given some discretionary authority over if and when distributions should be made to beneficiaries.

While the titles sound simple, the responsibilities of executors and trustees are considerable. They include paying or negotiating with creditors, notifying and paying beneficiaries and creditors, filing the final income tax return and managing any investments.

As such, an executor or trustee might need to hire an accountant or attorney to help carry out your financial wishes. As such, you might want to spell out a fee for the executor or trustee, said Alan Rothschild, an attorney specializing in estate planning at Hatcher, Stubbs, Land, Hollis & Rothschild LLP in Columbus, Ga. Or you might sign a separate payment agreement with the executor or trustee. A family member or close friend might agree to do it for free.

In the absence of a prior agreement, many states allow executors to be paid a one-time fee of between 2 percent and 3 percent of the estate, said Rothschild. With trusts, the fee is usually 1 percent of the assets a year.

For larger estates, the fee will likely be a smaller percentage.

Q: What happens to the debt I leave behind?

A: Whether you have a will or a trust, any debt you have at the time of your death will need to be settled. If your assets aren't liquid, creditors could force the sale of your property to get paid.

Of course, a trustee or an executor could negotiate with creditors to repay debts over time.

Q: Are there other benefits to setting up a trust?

A: Another reason some people prefer trusts is that it makes it easier to handle your care if you become medically incapacitated. You could stipulate in your trust that your assets be used to pay for your care, and the trustee would be able to disburse money from your estate without going to court.

Without a trust, the person who became your guardian could run into complications getting power to tap your assets.

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