UDO UDOMA & BELO-OSAGIE

Private Wealth

Wills vs Trusts

Which is right for your legacy ?

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Introduction

Building wealth takes years of discipline, sacrifice, dedication and intentional decision-making. Without a clear estate plan, succession challenges can erode a person's legacy and result in the dissipation of assets. This is particularly relevant in Nigeria, where customary land tenure, overlapping legal regimes governing land, recurrent intestate succession disputes and multijurisdictional asset ownership create additional layers of complexity. To navigate this landscape effectively, two principal estate planning tools warrant careful consideration: wills and trusts. Although they are sometimes used interchangeably in conversation, they serve distinct purposes and operate differently in practice. Choosing the right mechanism can significantly influence how your estate is administered.

We increasingly see families adopt estate planning as wealth structures grow more complex. The bigger risk is not the absence of documents; it is relying on outdated wills or informal arrangements that no longer reflect current family or financial realities. This often contributes to avoidable disputes and delays in succession, underscoring the need for regularly reviewed and properly structured estate plans that reflect both present intentions and future contingencies.

This article explains the differences between these key estate planning tools so you can choose the one that best protects your legacy and supports your succession strategy.

Understanding Wills: What You Need to Know

A will is a legal instrument that comes into effect upon the death of a person, known as the testator, and sets out their final wishes regarding the disposition of their properties and assets. It can cover current and future property and empowers the testator to distribute their estate to chosen beneficiaries according to their precise instructions. Beyond asset distribution, a Will can also serve as an instrument for issuing posthumous instructions, such as arrangements for the testator's funeral, including burial locations and funeral procedures. Such provisions help to guide surviving family members and ensure that the testator's last wishes are honoured.

Under Nigerian law, a will is valid only if the testator had the capacity to execute it at the time of execution, acted freely and without undue influence or coercion, and complied with all applicable statutory formalities. A valid will must also be signed by the testator and witnessed by at least two independent individuals who attest that it was executed voluntarily. These requirements help establish the authenticity of the document and provide safeguards against potential disputes or claims of coercion or incapacity. The testator may amend or revoke the will at any time during their lifetime, provided they remain of sound mind.

Aside from the witnesses, executors play a key role in this process. Executors administer the estate through probate, which validates the will and authorises them to act. They are either

appointed by being expressly named in a will, impliedly through its provisions, or selected by a nominee who has been empowered to appoint the executors on behalf of the testator. In instances where a will does not specify an executor, the law provides that a competent court has the authority to designate one to administer the testator's estate.

Understanding Trust Structures

A trust is a legal arrangement in which a trustee, who can be an individual or a legal entity, holds, manages, and ultimately distributes assets for the benefit of another party, known as the beneficiary. The settlor creates the trust, sets out the terms, appoints the trustee, and names the beneficiaries who will benefit from the trust. The trustee acts as custodian, managing and investing the assets according to the settlor's instructions.

In Nigeria, trusts are broadly categorised into private trusts and public trusts. However, for estate planning purposes, private trusts are predominantly used. A private trust may be created during the settlor's lifetime, often referred to as a 'living' trust or '*inter vivos'* trust, or it may be established upon the testator's death, following the directions set out in a will, commonly known as a testamentary trust. For a private trust to be considered valid and enforceable under Nigerian law, it must fulfil several essential criteria:

- **Certainty of Intention**: The settlor must exhibit an unequivocal intention to create a trust. This intention may be explicitly stated in a formal document or inferred from the settlor's actions and conduct.
- **Certainty of Subject Matter**: The property or assets intended to form the trust must be identifiable at the time of the trust's creation. If the property cannot be identified or is non-existent, the trust will fail.
- **Certainty of Objects**: The beneficiaries who are meant to benefit from the trust must be specifically identified or be ascertainable. Without a clear identification of the beneficiaries, the trust may be deemed void.

To create a trust, the settlor must transfer legal title to the trustee. This initial transfer is carried out through a binding instrument. For example, when real property is involved, a deed of assent is required to formally vest title in the trustee. However, for a testamentary trust that does not involve real property, the will's provisions serve to transfer the property to the appointed trustees upon the testator's death and after probate is completed.

Where trustees are individuals, they must be of legal age and have the requisite capacity to act. Trustees may also be trust corporations that are legally authorised to perform trustee functions. In a living trust, the settlor may serve as the initial trustee and retain the power to appoint additional trustees as required. A trustee may be replaced due to death, refusal to act, unfitness, court-ordered removal, discharge, or in any other manner provided in the trust instrument. Where necessary, trust property may be transferred by vesting declaration, conveyance to a new trustee, or a High Court vesting order.

Wills and Trusts: How They Differ

For estate planning purposes, wills and trusts are not mutually exclusive and often work best together as part of a coordinated strategy for giving effect to a person's wishes. A will can transfer assets to beneficiaries, while a trust can manage those assets before and after death, setting out conditions, timing and structured distributions. This approach is particularly useful for minors, vulnerable beneficiaries and long-term asset preservation.

Unlike a will, which only takes effect after death and requires probate, a trust can operate during the settlor's lifetime and beyond, providing continuous management, privacy, and control. Used together, they ensure a settlor's legacy is both transferred and responsibly preserved for the future. We have set out the key differences between a will and a trust below:

ITEM	WILLS	TRUSTS
Commencement	Takes effect only after the testator's death.	Can commence before or after the settlor's death.
Establishment	Simple to create, requiring minimal legal formalities (e.g., signing in the presence of 2 witnesses).	More complex setup, needing detailed drafting of trust agreements, transfer of assets, and possibly notarisation.
Flexibility in Amendment	Easily amended through codicils to adapt to changing circumstances.	More complex amendment process, as it may require the amendment of the trust agreement or a change of trustee.
Asset Distribution Process	Requires a probate grant, which may delay administration of the estate.	Allows immediate access after the death of the settlor without the need to obtain probate.

Cost	Requires a one-time probate charge on the estate. For example, in Lagos, the probate charge is typically 10%.	Typically, trustees charge a fee of 1 - 2% of the value of the trust assets, depending on the trust agreement, trust corporation, and asset class.
Privacy	Becomes public records during the probate process, undermining privacy.	Confidentiality is secured as trust documents are not accessible to the public.
Asset Protection and Risks	Assets may be vulnerable to claims by creditors.	Assets are protected from creditors.
Revocability	Can be fully or partially revoked through a new will or codicil, during the testator's lifetime.	May be revocable or irrevocable. Revocable trusts offer flexibility and can be revoked during the settlor's lifetime, while irrevocable trusts cannot be revoked once established.
Further Instructions	Can be used to give further instructions (e.g., funeral directives)	Usually restricted to asset management and distribution.

Wills v Trusts: Which Works Best for You?

When it comes to protecting your assets and planning your legacy, wills and trusts each serve a unique purpose. Understanding how they work, and how they can work together, can help you make the right choice when protecting your legacy.

Wills – When They are Best

A will is straightforward, cost-effective, and is particularly advantageous in the following cases:

a. **Appointing Guardians for Minor Children:**
A will is the only legal tool that allows for the designation of guardians for one's minor children and gives instructions for the child's care. In the absence of a will, family courts or tribunals may decide guardianship based on statutes such as the Child Rights Act[1], or customary laws, which can lead to disputes as the guardians may not be suitable for the child.

b. **Modest or Uncomplicated Estates:**
Wills are ideal for individuals with straightforward assets, such as estates comprising only Nigerian properties and no complex business or foreign interests. For example, if all your assets are bank accounts, a home, and a few personal items, a properly drafted will can distribute them easily among your beneficiaries. In these cases, a will fulfils its purpose with relatively low cost and complexity.

c. **Customary/ Islamic Inheritance Practices:**
In Nigeria, customary law often prioritises male heirs or communal family ownership. A valid will can be used to override these usual norms and dispose of assets to specific beneficiaries. In Northern Nigeria, Sharia law governs inheritance for Muslims, restricting wills to allocating only one-third of the estate. The remainder must be distributed to

[1] Section 83, Childs Right Act 2003.

Qur'anic heirs. The use of a will here guarantees compliance with the religious law and ensures partial flexibility.

d. **Charitable Gifts, Debts and Expenses**:
Wills can be used to donate charitable gifts to organisations or religious institutions or make provisions for direct payment of debts and funeral costs to be issued before distribution of the estate.

Wills are only effective after the death of the testator, and once signed, are required to go through the probate process. If privacy or speed are a concern, or the subject estate is complex with multi-jurisdictional reach, a trust may be more suitable. We have outlined why below.

Trusts – When They are Best

Trusts offer control for high-net-worth individuals and are advisable to use in the following cases:

a. **Time and Privacy Concerns:**
In Nigeria, the probate and administration system is governed by state laws and can be slow, often taking months or even years, especially if disputes arise, to validate a will and obtain probate. The process is also typically open to the public. By contrast, trusts allow a settlor to bypass probate, ensuring assets are transferred immediately to beneficiaries while maintaining privacy.

b. **Complex or Foreign Assets:**
Trusts simplify the administration of intricate or multi-jurisdictional assets such as digital interests or offshore assets. For example, a family with businesses in different countries can use a trust to centralise management and ensure seamless distribution. Digital interests (domain names, online accounts, e.g., cryptocurrencies) can also be managed under trusts.

c. **Securing Wealth Against Claims:**
Assets that have been validly transferred into a trust generally do not form part of the settlor's estate upon the settlor's death and may be protected from claims by creditors or from being treated as matrimonial property in divorce proceedings. However, courts will consider the substance of the transfer; fraudulent or bad-faith transfers may be set aside, while a bona fide trust is recognised as an asset protection tool.

d. **Protection of Beneficiaries:**
Settlors can set up long-term oversight for the transfer of assets to beneficiaries. This is particularly useful for minors to prevent reckless spending and for persons with special needs. It allows the settlor to provide that children inherit only at certain ages or milestones. The trustee then invests and manages the trust property till the conditions are met, avoiding the risk that a lump-sum inheritance is squandered or mismanaged.

e. Managing Land under Customary Law:
In regions where the land is held under customary tenure (e.g., ancestral lands), the usual disposition could be tasking. In such cases, a trustee can hold legal title to preserve the land for the beneficiaries. In practice, families often vest customary lands in trust to avoid disputes among heirs.

f. Inter Vivos Gifts:
Trusts also cover gifts made during the lifetime of the settlor (*inter vivos*), where continuous control is desired. For example, a parent could place certain property into a trust to fund for a child's education, with specific terms. The trust allows for parental supervision to ensure the assets are not being mismanaged. An *inter vivos* trust can also hold life insurance policies or pensions for beneficiaries.

To summarise, trusts are especially useful in high-value or structurally complex estates where straightforward testamentary distribution may not adequately address succession and privacy concerns. Unlike wills, which generally become public once admitted to probate, trusts offer greater confidentiality, limiting disclosure of assets and beneficiaries. They also support long-term planning and asset protection by separating legal ownership from beneficial enjoyment, reducing exposure to certain risks and claims. While not a universal solution, trusts remain a powerful estate planning tool when control, continuity, and preservation are key objectives.

Conclusion

Estate structuring is important and should not be delayed or overlooked. Whether through a will, a trust, or a combination of both, individuals can establish a clear framework for preserving and distributing their assets in accordance with their wishes, while promoting financial stability and reassurance for future generations. While wills primarily address wishes that take effect after death, trusts can also facilitate the management and distribution of assets during a person's lifetime. Used together, they can support a smooth and efficient transition of one's legacy.

Given the legal and practical considerations involved in estate planning, it is important to seek guidance from experienced legal advisers who can help structure an arrangement tailored to your specific needs and objectives. UUBO's Private Wealth team is well-positioned to provide comprehensive support in navigating these considerations and implementing effective estate planning strategies. In an increasingly complex financial and family landscape, proactive estate planning is not just a prudent decision but an essential step towards securing your legacy and protecting the interests of future generations.