

**Attorney Timothy P. Crawford, CPA, CELA, CAP  
wanted to share this information with you.**

## **DOES A TRUST MAKE SENSE FOR YOU?**

**GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE, OAK CREEK & RACINE**

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1. Assets in the Trust avoid guardianship on incapacity. There are many circumstances where Powers of Attorney cannot do the same thing.
2. A Trust imposes a high duty of care on a Trustee and eliminates third party liability. Powers of Attorney cannot do the same thing because though they impose a high duty of care on the Agent, they do not eliminate the third party liability and that third party that has the liability must accept the Power of Attorney. Because they remain liable, they frequently will not allow the Power of Attorney to be used.
3. A Trust is easily changed should you desire to do so. Re-drafting a Will is more difficult because it requires more formality than a Trust.
4. A Trust easily moves with you from state to state because it is valid in every state and interpreted by the state where it was written. Wills are designed to be valid and interpreted in the state they are drafted in. However, Wills are interpreted by the death state which may not be the same state in which it was drafted. Powers of Attorney are also state specific.
5. A Trust can define disability or incapacity in several ways and, if properly defined, does not require any court involvement. Proving disability or incapacity with a Power of Attorney may require going to court. For a third party accepting the Power of Attorney, nothing provides comfort and eliminates liability like a judge's signature.
6. A Trust provides one planning document full of instructions for the care of your loved ones upon your incapacity. A Power of Attorney created for you cannot provide those instructions for your loved ones, and Wills cannot work until your death.
7. A Trust provides one planning document full of instructions for the care of your loved ones upon your death. Wills do not work until probated and, to accomplish the same thing, the Will must have those instruction and the assets must be distributed to the estate. Probates are more expensive and can take months, and in some cases years if there are problems in probate.
8. A Trust provides benefits for your beneficiaries as long as the Trust is drafted to apply to the beneficiaries. Probate codes may limit how long those benefits can apply.
9. A Trust provides control of your assets for your family in case of your disappearance or absence instead of your family perhaps having to wait for several years to have you

declared dead to access assets and information. Without this ability, upon disappearance, it can take years before one can be declared to be legally dead, leaving the family unable to access assets and accomplish things such as repairing or selling the family home. Meanwhile, Powers of Attorney can't work without evidence that the person is alive.

10. A Trust provides continuity in the handling of your affairs by efficiently transferring your property to your loved ones after death. Probate takes more time, and isn't always smooth.
11. A Trust provides certainty of result if it is drafted properly and completely funded. Other methods of passing assets don't provide the certainty of results.
12. A Trust acts as a receptacle to own or be the beneficiary of assets. Wills do not work until probated and to accomplish the same thing, assets must be distributed to the estate. That can take months, and in some cases years if there are problems in probate.
13. Trusts make the best beneficiaries of life insurance policies because if an individual is named, and they are incapacitated or dead, then the proceeds go through either guardianship or probate. If the estate is named, then the proceeds are subject to the debts of both the decedent and the beneficiary. Otherwise, life insurance proceeds are not subject to the debts of either.
14. A Trust allows life insurance to be paid to the Trust without being subject to your current or future debts or creditors. Wills do not work until probated and to accomplish the same thing, assets must be distributed to the estate. That can take months, and in some cases years if there are problems in probate.
15. A Trust allows life insurance to be paid to the Trust without being subject to current or future debts or creditors of beneficiaries'. If life insurance is paid to the estate, it is subject to the debts and creditors of the insured decedent and the debts and creditors of the beneficiaries.
16. A Trust allows life insurance to be paid to the Trust so it passes according to your distribution and control plan. Life insurance left directly to beneficiaries can be subject to divorces, lawsuits, and creditors, or it may undo your overall planning due to lack of coordination with your distribution plan. It will also pass to the beneficiary without any controls, and may bypass your tax planning.
17. Upon your incapacity, a Trust avoids the expenses and fees associated with guardianship on all assets owned by your Trust. Guardianship usually costs tens of thousands of dollars and puts a judge, creditors, and everyone but your family in charge of your affairs.
18. A Trust avoids the expenses and fees associated with probate on all assets owned by your Trust. Probate can be expensive and time consuming. It absolutely provides a forum for disgruntled heirs to bring disputes, often without them paying legal fees on the front end. Probate benefits your creditors, and requires notice to them with a time frame for when they must make claims. But the worst thing it does is put a judge, disgruntled heirs, creditors, alleged creditors, and everyone but your family in charge of your affairs.
19. A Trust ensures your family's privacy following your incapacity or death by avoiding guardianship and probate on all assets owned by your Trust. Guardianship and probate are public and anyone can obtain the information in those files.

20. A Trust enables you to rely on your Trustees should you wish to travel or otherwise delegate the day-to-day management of your financial affairs. Powers of Attorney may not work when you are traveling since it might not be possible to prove you are actually alive, and if that is a problem, it will be too late to do anything about it. Again, if you can't be found, there is no guarantee that you are alive and the institution likely won't risk allowing the use of the POA in case you are dead.
21. A Trust enables you to measure how your successor Trustees perform when you delegate management duties to them. You will never know how the executor of your will performs.
22. A Trust is difficult for disgruntled heirs to attack and helps avoid disputes. By avoiding probate, it forces disgruntled heirs to hire and pay legal fees on the front end of this action to dispute any part of your plan.
23. A Trust can eliminate your family paying for medical procedures that were not authorized by your medical agents to the extent your estate avoids probate. If your estate goes through probate, unscrupulous medical professionals can force medical procedures upon you or a loved one and force your estate to pay the costs.
24. Upon death, a Trust adequately provides for the surviving spouse, children, or other beneficiaries. No other planning device provides enforceable instructions.
25. For married couples, a Trust achieves at least some of your death tax objectives by using both exemption equivalents. This is far more efficiently done in a Trust than in a Will. That's because of the disadvantages of having life insurance or annuities either paid to an individual or paid to an estate to take advantage of the tax planning. Right of survivorship planning will completely avoid your tax planning.
26. A Trust can allow each spouse to control the disposition of property so that in case of remarriage of the surviving spouse, the children are not accidentally disinherited. Wills can allow this, but not as efficiently as a Trust because of probate, and assets passing by right of survivorship or direct beneficiary designations can create the problem of children being accidentally disinherited. Will-based plans are often not funded so the will does not control distribution of all the assets and often the estate tax planning doesn't work in a Will as completely as it does in a Trust.
27. A Trust can allow the first decedent to control the distribution of his or her share of community property and his or her separate property while postponing any estate tax due until the surviving spouse dies. Wills can allow this, but not as efficiently as a Trust because of probate. Will-based plans are often not funded so the Will does not control distribution of all the assets and often the estate tax planning doesn't work in a Will as completely as it does in a Trust.
28. A Trust can eliminate disputes between the surviving spouse and children from a prior marriage, over the control or distribution of assets. Wills require probate which creates a forum to bring disputes.
29. A Trust can eliminate the possibility that if the surviving spouse remarries, the first decedent's children don't get what was intended for them to have. Wills can allow this, but not as efficiently as a Trust because of probate. Will-based plans are often not funded so the Will does not control distribution of all the assets and often the estate tax

planning doesn't work in a Will as completely as it does in a Trust. Further, Wills require probate, which creates a forum to bring disputes.

30. A Trust can avoid disputes between different sets of children from previous marriages. Wills can allow this, but not as efficiently as a Trust because of probate. Will-based plans are often not funded so the Will does not control distribution of all the assets and often the estate tax planning doesn't work in a Will. Further, Wills require probate, which creates a forum to bring disputes.
31. A Trust can encourage children or grandchildren to get a post-high school education. Wills can do this, but because of probate, not as efficiently as a Trust. Will-based plans are often not funded so the Will does not control distribution of all the assets and often the estate tax planning doesn't work in a Will as completely as it does in a Trust.
32. A Trust can provide educational standards for a post-high school education so beneficiaries don't become professional students or Trust babies. Wills can do this, but because of probate, not as efficiently as a Trust. Rarely is that issue even considered in Will-based planning. Will-based plans are often not funded so the Will does not control distribution of all the assets and often the estate tax planning doesn't work in a Will as completely as it does in a Trust.
33. A Trust can create protective Trusts for your loved ones that are free from the supervision of the probate court. Wills can allow protective Trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.
34. A Trust can provide creditor and lawsuit protection for children, including protection from failed marriages, and protection from estate taxation on the child's death. Wills can allow protective Trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.
35. A Trust can provide that if a beneficiary gets divorced, has current creditors, even if unknown to you, or is sued in the future, what you leave them will not be lost to those events. Wills can allow protective Trusts, but require probate, which automatically involves the court and makes it easier for predators and creditors to bring claims against your loved ones.
36. A Trust can permit a beneficiary who has special needs to stay on government benefits. Wills can allow protective Trusts, but require probate, which automatically involves the court and makes it easier for governmental agencies to bring claims against your loved ones.
37. A Trust can provide that upon the death of a beneficiary, assets will not be subject to estate tax again upon the beneficiary's death. Will-based plans are often not "funded" so the Will does not control distribution of all the assets and often the estate tax planning doesn't actually work in a Will. This would be devastating in a dynasty plan.
38. Even an unfunded Trust can still work better than an unfunded Will via either the Pour-Over Will, or the Will Substitute funding document that allows transfer of assets to the Trust that aren't in the Trust yet without the need to have those assets go through the Will and probate court. With a Will, those assets pass through probate completely by a different set of rules.

39. A Trust is easier to sign than a Will. A Trust is a contract, and only requires the signature of the Trustmaker to be valid. A Will requires [1] the Will-maker (testator) to be sworn in, asked questions, and sign, [2] a valid Self-Proving Affidavit that conforms with state law or disinterested witnesses to be brought to court to prove up the Will, and [3] at least two disinterested witnesses who must be sworn in and ask questions under oath. There are a lot of potential things a challenger could challenge about a Will signing, whereas with a Trust signing, a challenger would have to prove that the Trustmaker's signature is forged, or that duress was involved in the signing and later management.
40. A Trust is more difficult to challenge for incompetence than a Will. To prove incompetence, the challenger must prove the Trustmaker was incompetent at the time of signing, and that the Trustmaker remained incompetent while managing the Trust, since at any time the Trustmaker regained competence, he could have changed the Trust. A Will challenger only has to prove there was incompetence at the time of the Will signing, which might be as simple as showing the testator wasn't himself that day, though it is usually more complicated than that.
41. A Trust is more difficult to challenge for undue influence than a Will. To prove undue influence, the challenger must prove there was undue influence at the time of signing, and that the Trustmaker remained under that undue influence while managing the Trust. A Will challenger only has to prove there was undue influence at the time of the Will signing, which might be as simple as showing the attorney who drafted it recommended that the testator sign the Will, though it is usually more complicated than that.

**“Those Who Plan Ahead Win.  
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

\*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

\*\*Timothy P. Crawford was invited to join the Council of Advanced Practitioners (CAP) of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. CAP is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client’s Choice Award.

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to Protect Their Assets from Nursing Home Care Cost"**

“A majority of text has come from an article prepared by Attorney Rex L. Hogue, friend of Attorney Timothy P. Crawford.”