Trust vs Will for Estate Planning for Families Under the Inheritance Tax Exemption

A Practical Decision Framework for Families in Alabama, Texas, and Florida

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THE SHORT VERSION

Executive Summary & Core Takeaways:

• **Will vs. Trust Scope:** This brief compares a will-centered estate plan with a funded revocable living trust. Irrevocable trusts used for estate-tax reduction, gifting, or asset protection are a separate layer of planning.

• **Tax Neutrality:** A revocable trust is not an estate-tax shelter. Its principal advantages are probate avoidance for assets actually titled in the trust, privacy, continuity during incapacity, and efficient multi-state property administration.

• **State Jurisdiction Matters:** Alabama has no statutory transfer-on-death (TOD) deed regime for real estate; Texas offers TOD deeds, independent administration, and muniment of title; Florida features statutory fee presumptions and constitutional homestead rules that override trusts.

• **Income Tax Basis Focus:** In 2026, the federal estate and gift exclusion is $15 million per person ($30 million married). For families under this threshold, income tax basis management (IRC § 1014) outweighs estate tax avoidance.

• **Document Vintage Defect:** Documents executed prior to 2018 containing formula bequests tied to federal exclusion limits can inadvertently disinherit surviving spouses or surrender vital second-death basis step-ups.

• **Coordinated Execution:** The best plan is system-driven—beneficiary designations, deeds, business agreements, powers of attorney, and active trust funding matter as much as drafting.

PART ONE: Start with the Balance Sheet, Not the Document

For a high-net-worth family, 'Do I need a trust?' is usually the wrong first question. The right starting point is a systematic audit of the balance sheet—mapping assets that would actually be exposed to probate and identifying the operational problems the family needs the plan to solve.

1. Title and Beneficiary Designations: Qualified retirement accounts (IRAs, 401ks), life insurance policies, transfer-on-death (TOD) and payable-on-death (POD) accounts, jointly owned assets with right of survivorship, and assets already held in trust pass outside probate automatically by contract, regardless of what the will specifies.

2. Real Estate Across State Lines: Owning a second home, ranch, rental property, mineral interest, or commercial real estate outside your state of legal domicile creates a multi-jurisdictional administration problem. Primary probate occurs in the domicile state, while ancillary probate must be opened in each state where real property resides. Multi-state real estate is one of the strongest catalysts for a funded revocable trust or entity structure.

3. Family Dynamics and Governance: Blended families, beneficiaries with creditor or spending vulnerabilities, children from prior marriages, special-needs dependents, and unequal inheritance arrangements make long-term administrative control far more critical than avoiding court filing fees.

4. Business Entities and Concentrated Wealth: Closely held operating companies, partnerships, carried interest, private equity allocations, and concentrated stock positions involve transfer restrictions, valuation hurdles, liquidity needs, and governance continuity that standard, off-the-shelf estate documents cannot address alone.

5. Document Vintage and Domicile Shifts: Estate documents must be reviewed against changes in family wealth, law, and domicile. A plan drafted under one state's laws often contains provisions that conflict with statutory or tax rules upon relocating to Alabama, Texas, or Florida.

PART TWO: One Question, Three Very Different States

The exact same balance sheet leads to significantly different legal and financial recommendations depending on state domicile and asset location. The matrix below outlines how state law alters the estate planning equation across Alabama, Texas, and Florida.

STATE	PROBATE & ADMINISTRATION	REAL-ESTATE TOOLS	PLANNING IMPLICATIONS
Alabama	No statutory percentage fee schedule for probate attorneys; fees set by reasonableness. Personal representative fees capped by statute (extraordinary fees sit outside cap). 6-month creditor window shapes timeline.	No enacted transfer-on-death (TOD) deed regime for real estate. No statutory authority for enhanced life estate ('Lady Bird') deeds.	Funded revocable trust becomes highly compelling when Alabama real estate is material, privacy is valued, or property exists in multiple states.
Texas	Independent administration allows executors to settle estates with minimal court supervision. Muniment of title offers streamlined asset transfer when no debts exist.	Texas expressly authorizes Transfer-on-Death deeds for real property under Estates Code Ch. 114.	For a Texas-only estate, probate avoidance alone rarely justifies a trust. Privacy, incapacity management, business continuity, and multi-state holdings are primary drivers.
Florida	Statutory fee schedules presumed reasonable for executors and attorneys in formal administration. Attorney schedule is negotiable by written disclosure.	Constitutional homestead rules strictly limit devises if survived by a spouse or minor child.	Revocable trusts offer substantial value, but titling and devises must strictly coordinate with Florida homestead rules to avoid invalid transfers.

Key State-Specific Nuances to Remember:

Alabama: Probate costs are not automatically '3% to 5% of the estate.' Alabama imposes no percentage fee schedule for probate attorneys, and widely cited percentage ranges are imported from states like California or New York. Real costs depend on estate complexity, litigation risk, and which assets actually pass through probate.

Texas: A well-drafted will authorizing independent administration makes probate far less burdensome than families relocating from other states anticipate. Texas also provides statutory TOD deed mechanisms that allow real estate to bypass probate entirely.

Florida: Statutory attorney fee guidelines are presumptions of reasonableness, not mandatory costs. Furthermore, constitutional homestead rules govern how a primary residence passes at death, overriding inconsistent provisions in a revocable trust or will.

A Closer Look at the Texas Toolkit

Texas gives families more statutory non-trust estate options than most jurisdictions, which is precisely why the choice to use a trust in Texas should be based on incapacity, privacy, or multi-state assets rather than probate avoidance alone:

• **Transfer-on-Death Deeds (Estates Code Ch. 114):** Effective for real property, but narrow in application. TOD deeds cannot be executed via power of attorney, cannot be overridden by a subsequent will, and remain subject to creditor claims for up to two years after death—causing title insurance companies to exercise caution during that window.

• **Independent Administration:** Executors act independently of probate court supervision once appointed. An inventory must be filed within 90 days, though an independent executor with no unsecured debts may file an affidavit in lieu of inventory to keep asset values off public court records.

• **Muniment of Title:** Available when the estate owes no unpaid debts (other than real estate mortgages). The will is admitted to probate as proof of title without appointing an executor. While title companies accept muniment orders, financial institutions and out-of-state brokerages sometimes hesitate to act on them due to the absence of letters testamentary.

• **Community Property Survivorship Agreements:** Spouses can agree in writing that community property passes to the survivor without formal court administration. However, property remains liable for deceased spouse debts, and joint bank account tags alone do not create a valid survivorship agreement.

PART THREE: Where a Funded Revocable Trust Genuinely Earns Its Keep

A funded revocable living trust is an exceptional administrative vessel when applied to the right structural challenges:

1. Multi-State Real Estate: Real property is governed by the state where it resides. A decedent domiciled in Alabama, Texas, or Florida who owns land in another state triggers ancillary probate in that secondary jurisdiction. Titling out-of-state property into a revocable trust unifies administration under one vehicle.

2. Incapacity & Operational Continuity: A will has zero legal effect during life. If a grantor becomes incapacitated due to illness or injury, a successor trustee steps in immediately to manage trust investments, pay obligations, and oversee business assets without public court guardianship or conservatorship proceedings.

3. Privacy Preservation: Probated wills and asset inventories become public court records. Trust administration remains private, shielding family wealth, beneficiary identities, and distribution terms from public scrutiny.

4. Post-Death Distribution Control: Revocable trusts allow grantors to establish staged distributions, spendthrift protections, sub-trusts for minor or adult children, and special-needs provisions without requiring ongoing probate court oversight.

5. Administrative Efficiency for Distant Fiduciaries: When designated executors or trustees live in different states, managing assets through a centralized trust simplifies paperwork and institutional recognition.

> THE FUNDING IMPERATIVE
>
> **CRITICAL LESSON: THE FUNDING RULE**
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> • **Execution vs. Funding:** A signed trust document does not avoid probate—only a *funded* trust avoids probate. If real estate deeds were never recorded in the trust's name and taxable brokerage accounts were never retitled, those assets remain in the probate estate under a pour-over will. The family ends up paying for both court administration and trust setup.
>
> • **Ongoing Maintenance Protocol:** Funding is an active, continuous responsibility. Every new financial account, property acquisition, entity restructuring, or business investment requires explicit title and beneficiary coordination.

What a Revocable Trust Does NOT Accomplish

To maintain objective planning standards, advisors and families must recognize the boundaries of revocable trusts:

• **No Asset Protection from Personal Creditors:** Because the grantor retains total control and revocation power during life, assets in a revocable trust remain fully accessible to personal judgment creditors.

• **No Estate Tax Reduction:** Assets held in a revocable trust are included in the grantor's gross estate for federal estate tax purposes under IRC § 2038.

• **Does Not Eliminate Settlement Duties:** Marshaling assets, settling valid liabilities, filing final individual and fiduciary income tax returns, and accounting to beneficiaries are legally required under both wills and trusts.

• **Trustee Compensation Realities:** Corporate or professional trustees charge annual fees based on asset percentages. Over a multi-year trust administration, professional trustee fees can exceed one-time probate executor commissions.

• **Contest Windows:** In certain jurisdictions (including Alabama), the statutory window to contest a revocable trust after death can extend longer than the probate contest window unless formal statutory notices are served.

PART FOUR: When a Will-Centered Plan May Be Entirely Reasonable

A revocable trust is a tool, not a mandatory requirement. A well-designed, will-centered plan is frequently the most elegant and cost-effective solution when non-probate titling mechanisms handle the majority of wealth transfer:

• **Financial Assets Pass via Contract:** Brokerage accounts with TOD/POD registrations, qualified retirement plans, and life insurance pass cleanly to beneficiaries outside probate.

• **Single-State Real Estate Footprint:** When all real property resides in one state with straightforward ownership, ancillary probate is not a factor.

• **Low Privacy Concerns & Capable Fiduciaries:** In harmonious families with transparent assets and cooperative heirs, court-supervised probate presents minimal friction.

• **Texas Independent Probate Advantage:** Texas statutory tools allow wills to be administered with exceptional efficiency.

Matching the Tool to the Planning Problem:

PLANNING CONCERN / OBJECTIVE	WILL-CENTERED PLAN	FUNDED REVOCABLE TRUST
Avoiding probate on financial accounts	Handled directly via TOD / POD & beneficiary tags	Fully effective, but contractual tags also work
Real estate in single state of domicile	Workable; exceptionally efficient in Texas	Streamlines transfer; eliminates court filings
Real estate across multiple states	Requires secondary ancillary probate in each state	Primary benefit: unifies multi-state land under trust
Incapacity & asset management	Relies entirely on Durable Financial Power of Attorney	Successor trustee assumes management directly
Privacy of assets & distribution terms	Probate inventory and court filings are public	Private administration; terms remain confidential
Post-death conditional distributions	Testamentary trust created after court probate	Continuing trust established without court oversight
Federal estate tax reduction	No effect (requires irrevocable tax planning)	No effect (requires irrevocable tax planning)
Creditor protection during lifetime	No protection	No protection

PART FIVE: The 2026 Tax Picture: Estate Tax is Only Half the Question

Following post-2025 federal tax updates, estate planning for affluent families has pivoted. For households under or near the federal threshold, the core strategic question is no longer 'How do we dodge estate tax?'—it is 'How do we maximize income tax basis step-ups while protecting family wealth?'

2026 TAX ITEM / STATUTORY RULE	AMOUNT OR STATUTORY VALUE	PLANNING & STRATEGIC IMPLICATION
Federal Estate & Gift Exclusion	$15,000,000 per person	Married couples preserve up to $30M via portability. Indexed for inflation starting 2027.
Generation-Skipping Tax (GST) Exemption	$15,000,000 per person	Not portable between spouses. Requires proactive first-death allocation for dynastic planning.
Annual Gift Tax Exclusion	$19,000 per donee ($38k married)	Allows significant wealth transfer to children/grandchildren without consuming basic exclusion.
Top Federal Transfer Tax Rate	40%	Applies to taxable estate value exceeding available exclusion after allowable deductions.
IRS § 7520 Rate (Sept 2026)	5.40%	Critical hurdle rate for GRATs, CLATs, and QPRT split-interest planning.

2026 TAX ITEM / STATUTORY RULE	AMOUNT OR STATUTORY VALUE	PLANNING & STRATEGIC IMPLICATION
IRS Mid-Term AFR (Sept 2026)	4.49%	Benchmark interest rate for intra-family promissory notes and grantor trust sales.
State Estate / Inheritance Tax	None in AL, TX, or FL	Federal transfer tax and federal income tax basis rules remain the sole tax considerations.

Income Tax Basis (IRC § 1014) as the Hidden Asset

When an appreciated asset is held until death, its income tax basis is adjusted ('stepped up') to fair market value under IRC § 1014. Consider a stock portfolio purchased for $400,000 that has grown to $2,000,000. If sold during life, the $1,600,000 gain triggers $380,800 in federal capital gains taxes (20% top bracket + 3.8% Net Investment Income Tax). If held until death and passed to heirs, that $380,800 tax liability vanishes completely.

For estates under $15 million ($30 million married), lifetime gifting of highly appreciated assets to 'reduce the estate' can be a disastrous mistake—it surrenders a guaranteed income tax basis step-up to avoid an estate tax that would never have been owed.

TEXAS COMMUNITY PROPERTY BASIS ADVANTAGE
Texas is a community property state. Under IRC § 1014(b)(6), when a married couple holds community property and at least half of the aggregate community interest is includible in the deceased spouse's gross estate, the *entire* community property asset—both the deceased spouse's half and the surviving spouse's half—receives a 100% basis step-up to fair market value at the first death. Correctly characterizing property as community vs. separate prior to the first death is one of the highest-value tax planning moves available to Texas couples.

The Pre-2018 Formula Clause Defect: A Major Hidden Risk

This is the single most common and expensive structural defect found in existing estate plans. Wills and trusts drafted prior to 2018 frequently contain mandatory formula clauses leaving 'the maximum amount that can pass free of federal estate tax' to a credit-shelter bypass trust, with the remaining balance passing to the surviving spouse.

When the exclusion was $1 million or $5 million, this formula divided the estate logically between the bypass trust and the spouse. However, with the exclusion at $15 million, that exact same formula can direct a $12 million estate **entirely into the credit-shelter trust**. This completely disinherits the surviving spouse from outright ownership and forfeits the second basis step-up on those assets upon the surviving spouse's later death.

Portability, Bypass Trusts, and Structural Flexibility

• **Portability Election (DSUE):** Allows a surviving spouse to inherit the deceased spouse's unused $15 million exclusion. Requires filing Form 706. Estates below the filing threshold have up to 5 years under simplified IRS procedures to make the election.

• **Portability Limitations:** The inherited DSUE exclusion is fixed in nominal dollars and does not index for inflation. Additionally, DSUE is lost if the surviving spouse remarries and survives a subsequent spouse.

• **GST Exemption Non-Portability:** The $15 million Generation-Skipping Transfer tax exemption is strictly non-portable. Leaving assets 100% outright to a spouse wastes the first spouse's GST exemption, compromising multi-generational wealth transfers.

• **Advanced Irrevocable Planning:** High-net-worth families exceeding $30 million should utilize Spousal Lifetime Access Trusts (SLATs), Grantor Retained Annuity Trusts (GRATs), Intentionally Defective Grantor Trusts (IDGTs), or Irrevocable Life Insurance Trusts (ILITs). These tools address transfer tax and asset protection, completely separate from a basic revocable trust.

PART SIX: Executive Decision Checklist (12-Question Audit)

Before executing or updating an estate plan, review these twelve audit questions with your legal and financial advisors:

• **1. Line-by-Line Asset Audit:** Which specific assets pass via contract/beneficiary designation versus probate court or trust title?

• **2. Transfer Mechanism Alignment:** Are we utilizing the cleanest transfer mechanism (TOD/POD deed vs. trust) for each asset class?

• **3. Multi-State Real Estate Check:** Do we own real property or mineral rights outside our home state that will trigger ancillary probate?

• **4. Trust Funding Responsibility:** Who is explicitly tasked with retitling accounts, drafting deeds, and updating beneficiary designations?

• **5. Incapacity Governance:** Does our designated successor trustee have immediate operational authority over investments, businesses, and bill pay?

• **6. Comprehensive Fee Modeling:** What are the total projected executor, attorney, trustee, and court costs over the real administration timeline?

• **7. Formula Clause Vintage Audit:** Do our documents predating 2018 contain formula bequests tied to federal exclusion limits?

• **8. State Homestead & Spousal Rules:** How do Florida homestead restrictions or Alabama spousal elective share rules affect our distribution plan?

• **9. Dual-Death Basis Modeling:** Has the plan modeled capital gains tax basis step-ups at both the first and second spousal deaths?

• **10. Tax Election Preservation:** Are mechanisms in place to file for DSUE portability and allocate GST exemption at the first death?

• **11. Business Succession Alignment:** Do buy-sell agreements, operating agreements, and fund documents align with our estate documents?

• **12. Domicile Change Verification:** If we relocated between AL, TX, or FL, have state property characterization and power of attorney laws been updated?

PART SEVEN: Practical Bottom Line & Action Plan

For high-net-worth families, an estate plan is not a static binder sitting on a shelf—it is an active financial management system. A revocable trust is justified when it solves concrete administrative problems: multi-state real estate, incapacity continuity, privacy, or complex family governance.

Summary by State Domicile:

In Alabama: Material real estate and multi-state assets strongly favor a funded revocable trust due to the lack of TOD deed statutes and formal court administration windows.

In Texas: Independent administration and TOD deeds make will-centered plans remarkably efficient. Trusts are selected primarily for privacy, business continuity, or out-of-state property.

In Florida: Revocable trusts are highly effective, but asset titling must be rigorously coordinated with constitutional homestead mandates.

STRATEGIC CONSULTATION

NEXT STEPS: ALIGNING YOUR ESTATE SYSTEM WITH CRIMSON WEALTH

At Crimson Wealth Management, we work alongside your estate attorney to ensure your balance sheet, asset titling, beneficiary designations, and tax basis strategies function as a seamless system.

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