

Trust? Or, No trust?

While a Will, Power of Attorney (POA), and HIPAA authorization form a solid foundational plan, they do not solve every problem, particularly regarding probate and incapacity management. Here is a breakdown of why a Revocable Living Trust (RLT) is often recommended alongside these documents, along with a look at Enhanced Life Estate Deeds (often called Lady Bird Deeds in Michigan).

The Core Limitation of a Will

The primary reason to add a Revocable Living Trust is to avoid probate. In Michigan, even a "simple" probate process can take 6 to 12 months, involve court costs, and become a matter of public record.

- **With a Will: Your assets pass through the probate court. The personal representative must petition the court, notify creditors, and obtain court approval to distribute assets. This is public and can be costly.**
- **With a Revocable Trust: Assets titled in the name of the trust bypass probate entirely. Upon death, the successor trustee distributes assets according to the trust terms privately and immediately, without court intervention.**

Comparison: Will vs. Revocable Living Trust (RLT)

Feature	Will + POA	Revocable Living Trust (RLT)
Probate	Required (Public, Time-consuming)	Avoided (Private, Immediate)
Incapacity	POA handles finances; Guardianship may still be needed if POA is challenged or banks resist.	Successor trustee steps in seamlessly; no guardianship usually needed.
Privacy	Will becomes a public record upon filing.	Trust remains private; no public filing required.
Cost (Upfront)	Lower (Drafting is simpler).	Higher (Requires drafting + funding/trustee transfer).
Cost (Post-	Higher (Court fees, personal	Lower (Administrative costs

Feature	Will + POA	Revocable Living Trust (RLT)
Death)	representative fees, attorney hours).	only, no court fees).
Complexity	Moderate.	High (Must "fund" the trust by retitling assets).

The "Cons" of a Trust: The main drawback is the administrative burden of funding the trust. A trust is useless if assets aren't retitled into it. For a couple, this means changing deeds, beneficiary designations on investment accounts, and potentially re-registering vehicles. If they fail to fund the trust, the Will still has to go through probate for those assets. Additionally, trusts can be slightly more expensive to draft initially.

The Role of Enhanced Life Estate Deeds (Lady Bird Deeds)

Michigan recognizes Enhanced Life Estate Deeds (ELEs), commonly known as Lady Bird Deeds. These are a powerful middle ground, specifically for real estate.

- **How it works:** The couple retains full control to sell, mortgage, or revoke the deed during their lifetime. Upon the death of the last surviving spouse, the property automatically transfers to the named beneficiaries (the children – or the Trust) without probate.
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- **Pros:**
- **Medicaid Planning:** Unlike a standard life estate, an ELE does not trigger a Medicaid look-back period because the transfer happens only at death. This preserves eligibility for long-term care benefits.
- **Simplicity:** Much cheaper and easier to execute than a full trust for just the home.
- **Probate Avoidance:** Specifically for the real estate, it avoids probate.
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- **Cons:**
- **Limited Scope:** It only applies to the real property described in the deed. It does not cover bank accounts, investments, or personal property.

- **Creditor Issues: While it avoids probate, it does not necessarily protect the property from the children's creditors once they inherit it, nor does it provide the same level of control over how the inheritance is distributed (e.g., staggered distributions) as a trust can.**

Summary Recommendation for a Conservative Approach

For a conservative estate plan that prioritizes efficiency and privacy:

1. **Keep the Wills: [Only get a POUR OVER Will] They act as a "catch-all" for any assets accidentally left out of the trust and handle the appointment of guardians for minor children (though your children are adults, this is still good practice).**
 2. **Add the RLT: This is the most robust solution. It avoids probate for all asset types (real estate, financial accounts, personal property), provides seamless management during incapacity without court-appointed guardianship, and keeps family affairs private.**
 3. **Consider the Lady Bird Deed: If the couple wants a lower-cost option specifically for their home to avoid probate and preserve Medicaid eligibility, an ELE is an excellent standalone tool. However, if they want to ensure the children receive the home and other assets under the same set of rules (e.g., if one child is a spendthrift or has creditor issues), the RLT is superior because it allows for "sprinkling" provisions and asset protection trusts for the beneficiaries.**
- The Bottom Line: If the goal is simply to avoid probate on the house cheaply, the Lady Bird Deed is sufficient. If the goal is a comprehensive plan that avoids probate on all assets, ensures privacy, and manages incapacity without court involvement, the Revocable Living Trust is the gold standard, despite the higher upfront effort to fund it.**