



#### DO I NEED A WILL OR TRUST?

This should be a goal-oriented question answered by identifying what you are trying to accomplish, and what is the most effective way to do that.

## Some questions to ask:

Do you want to save money and time for yourself or are you more concerned about saving money and time for your heirs?

How willing are you to do the leg work of funding a trust and keeping it updated over your life?

What property do you own and where is it located? Do you own property in multiple states? Is the property mortgaged or debt free?

What is the value of your estate (over or under 25.84 million if married/12.92 million if single in 2023 there are estate tax considerations)?

Do you have disabled relatives?

How important is privacy in the passing of your estate?

#### PROPERTY CONTROLLED BY A WILL

Wills only control probate property

## **Probate property includes**

- assets titled to the deceased person (decedent) alone
- assets the decedent owned as a tenant in common with one or more other persons where the deed does not specify that the property is held with right of survivorship
- assets with the estate designated as beneficiary or with no beneficiary named or no payable on death designation made
- money owed to the deceased person that will be paid after death (e.g. lawsuit proceeds, last paycheck, refunded deposits, etc.)

### Non-probate property includes

- property with beneficiary designations (e.g. insurance, payable on death accounts, IRAs, investment accounts, Transfer on Death securities)
- property in accounts with a joint owner
- real property titled to multiple owners as joint tenants with right of survivorship
- Property held in a life estate deed where the decedent's interest is the life estate

#### UNPROBATED WILLS HAVE NO POWER

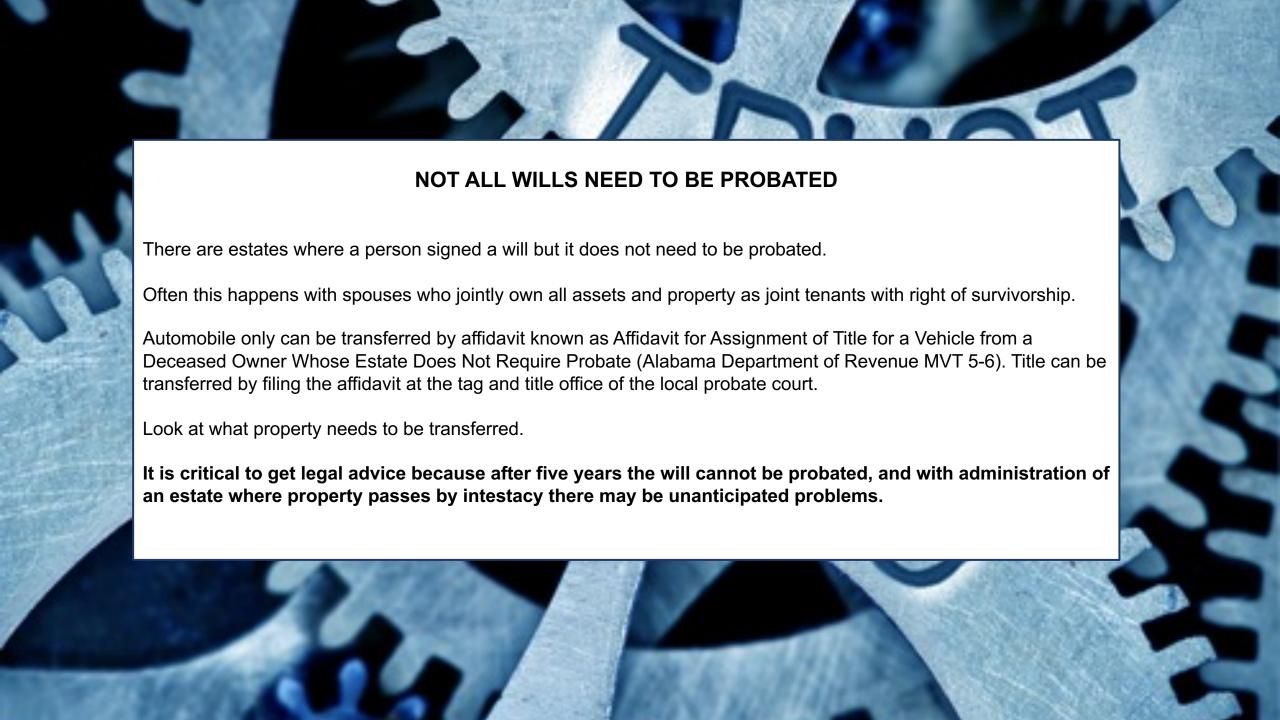
Wills have no effect until accepted by the probate court within five years of death. With no will or one not filed timely property passes by intestate succession.

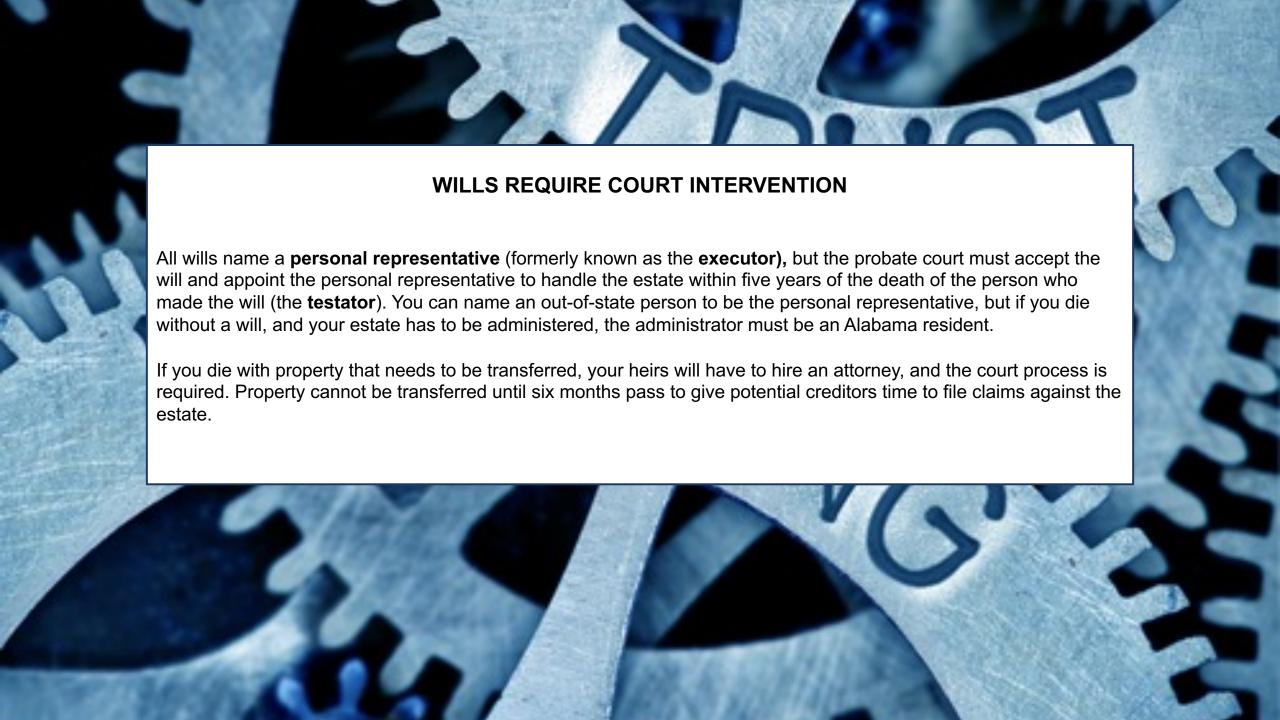
#### Alabama's intestate succession law provides the following direction:

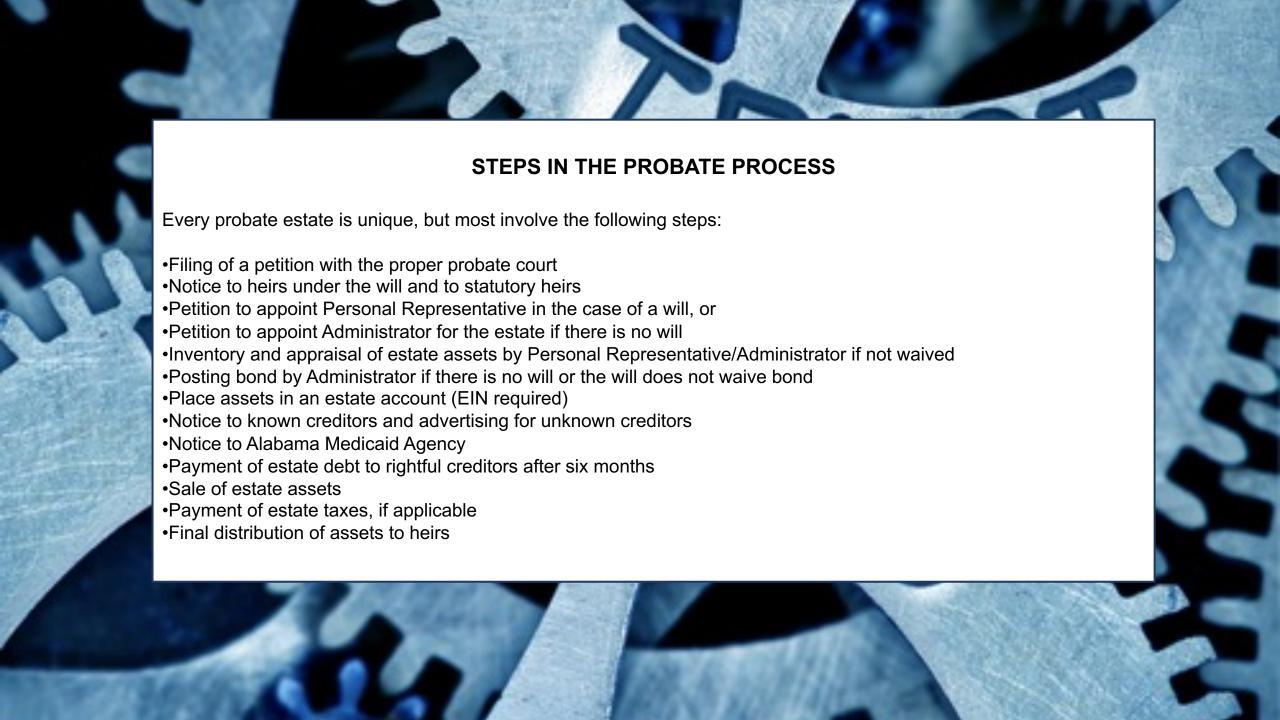
- If there are no children and no parents, all to the spouse;
- If there are no children, but there is a spouse and there are parents, the first \$100,000 plus 1/2 of balance over \$100,000 to the spouse and 1/2 of the balance over \$100,000 to the parent or parents;
- If there is a spouse and a child or children by a previous relationship, 1/2 to the spouse and 1/2 to the child or children by the previous relationship (note that children of the marriage existing at the time of death take nothing);
- If there is a spouse and a child or children by the surviving spouse, the first \$50,000 to the spouse plus 1/2 of the balance over \$50,000 to the spouse and 1/2 of the balance over \$50,000 to the child or children by the surviving spouse.

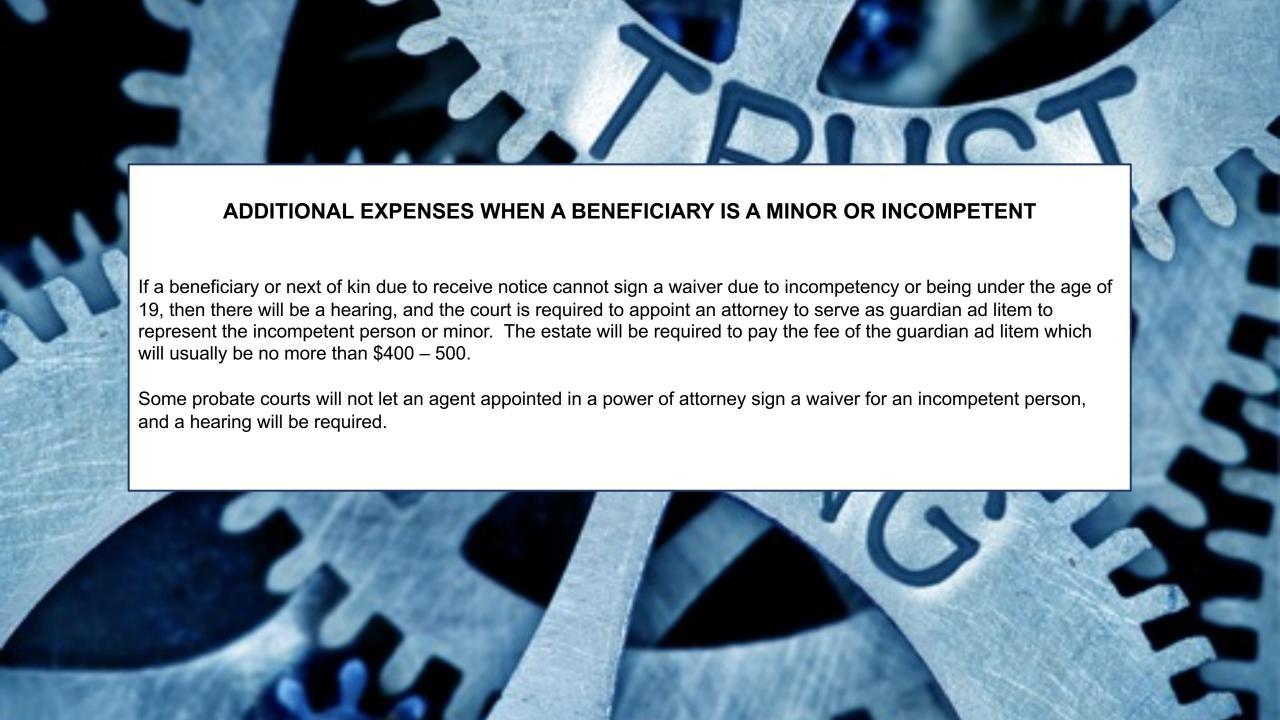
if there is no surviving spouse, then distribution will be in the following order:

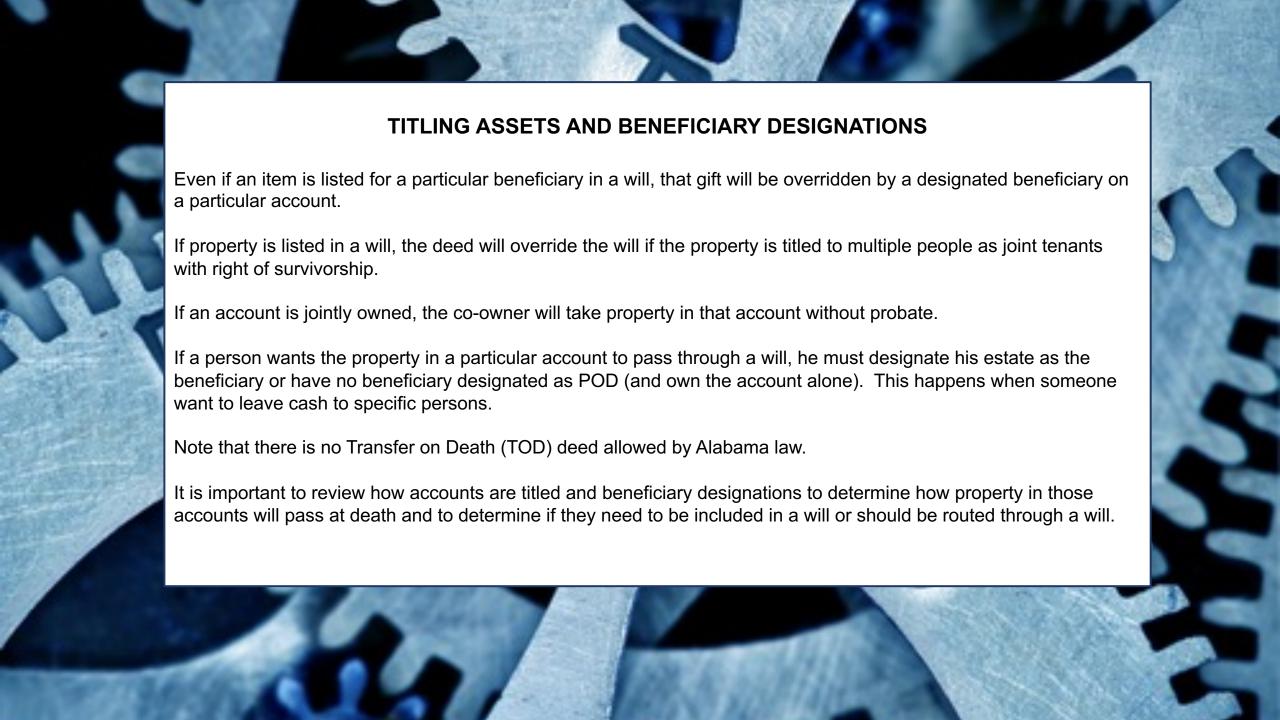
- all to the child or children:
- all to the parent or parents;
- all to the siblings;
- all to the grandparents;
- all to the aunts and uncles;
- all to the cousins.











### **Common Mistakes**

Failure to recognize debt (to include Medicaid Estate Recovery) resulting in unforeseen consequences, even insolvent estates

Failure to coordinate probate with non-probate property

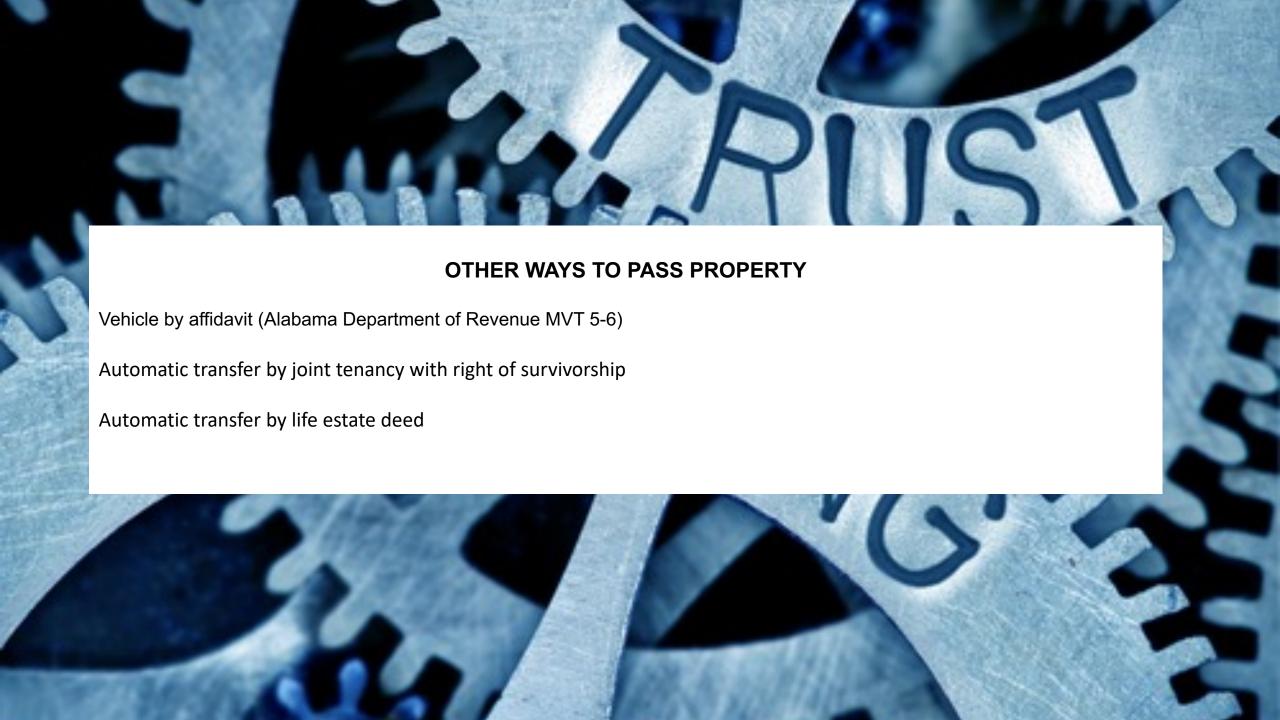
Failure to determine where cash will come from for a bequest

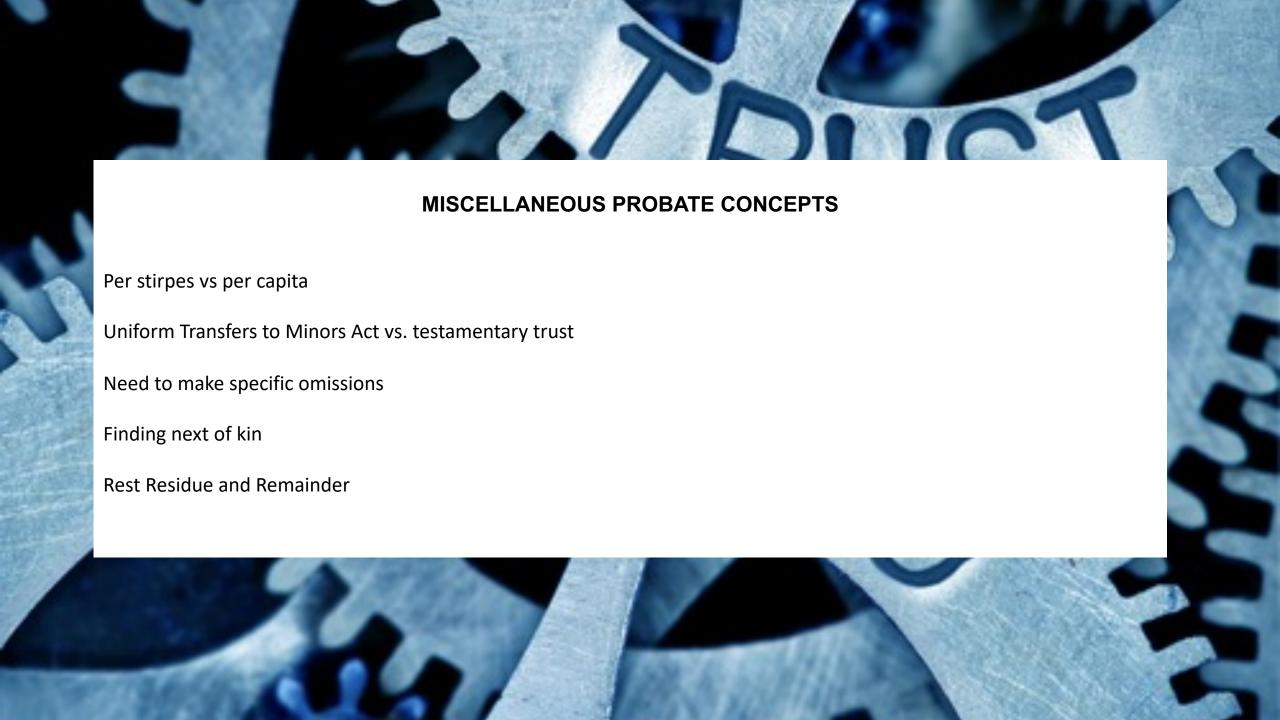
Failure to timely probate a will resulting in an administration of the estate

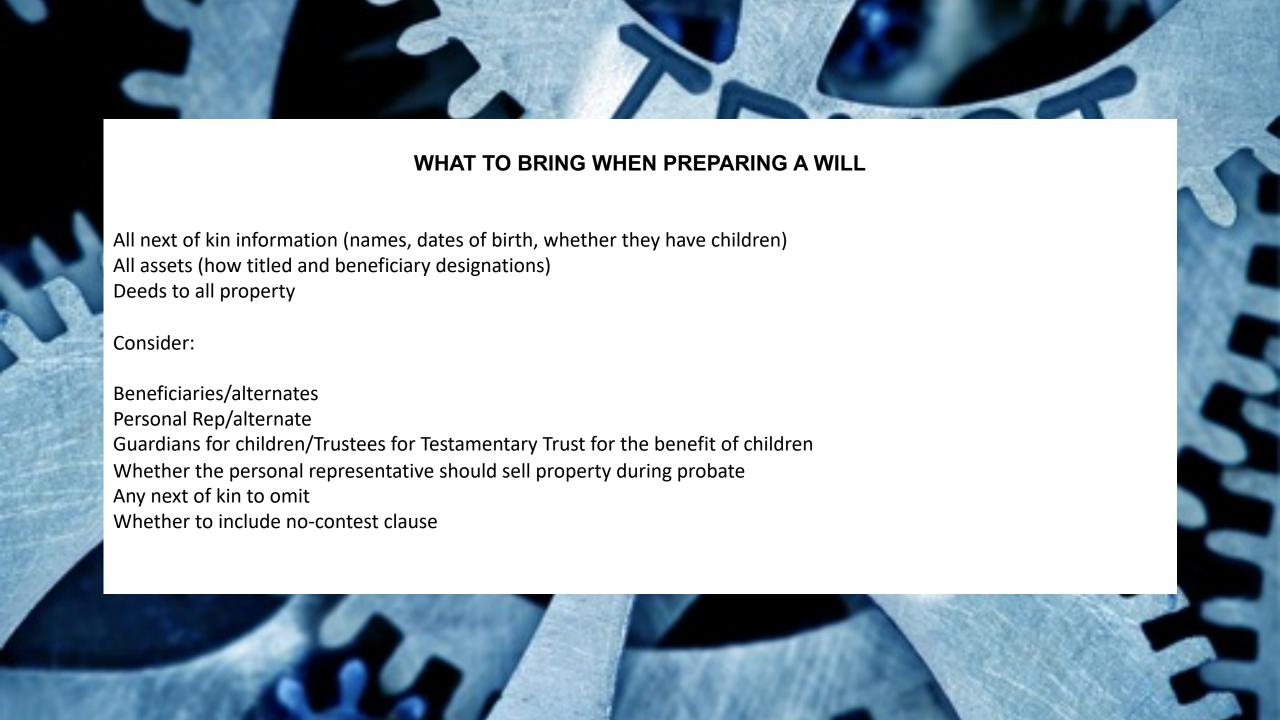
Failure to list real property to provide a roadmap for heirs

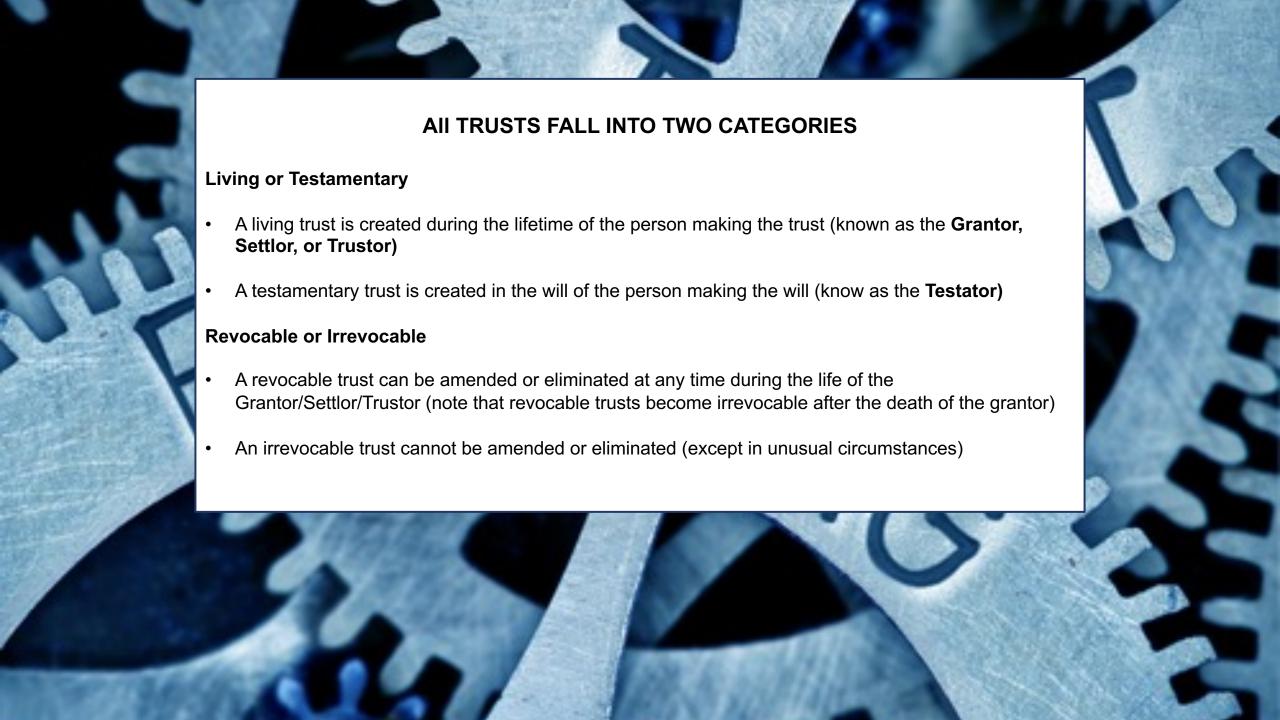
Failure to recognize that a power of attorney has no authority to conduct business once a principal dies

Failure to recognize that not all wills need to be probated and a review of all property owned by the deceased is necessary to make that determination

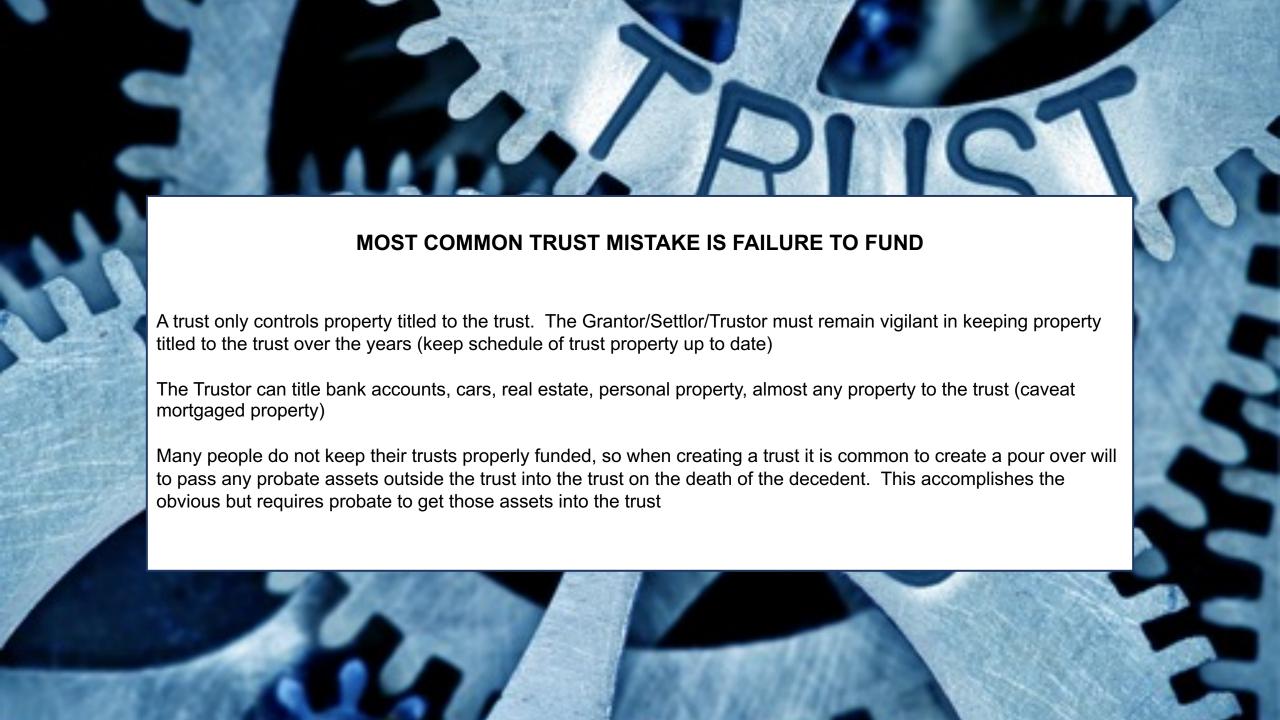




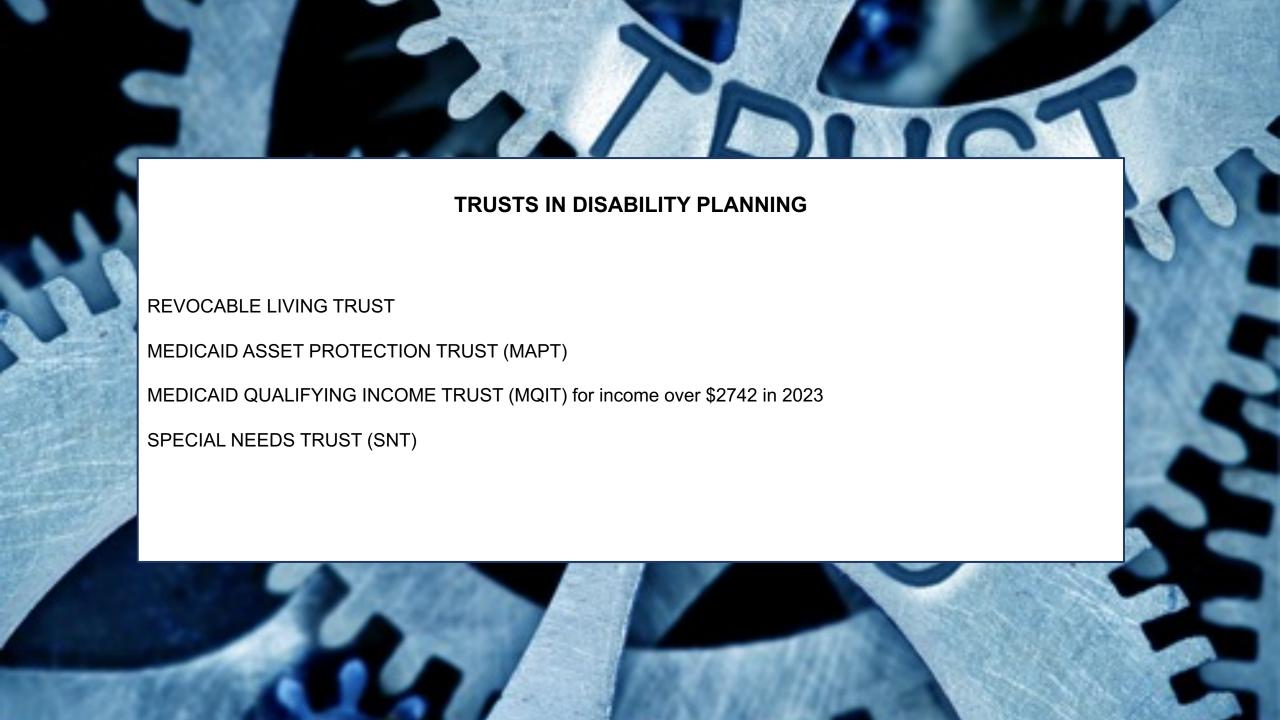






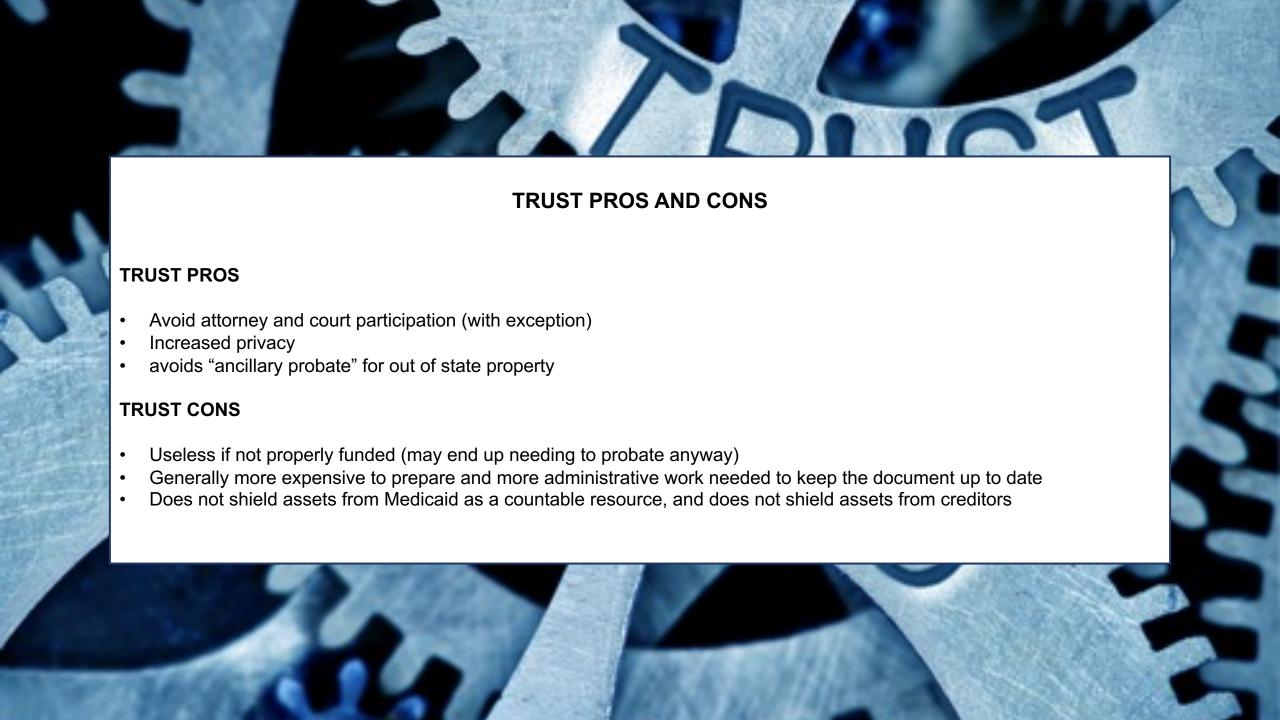








# WILLS PROS AND CONS **WILLS PROS** Generally less expensive to prepare No administrative work to keep it up to date (but should be reviewed every few years) May or may not need to be probated **WILL CONS** Original will needs to be located If beneficiary designation or joint ownership is not in place, accounts are frozen until court appoints personal representative If will needs to be probated must hire an attorney and have the will accepted by the probate court Probate process takes six months to give creditors time to file claims in court





- Failure to waive bond and inventory
- Failure to explain how to identify, integrate and balance probate and non-probate property (providing a false sense of security)
- Failure to consider planning for disabled children/grandchildren/spouse or other disabled relatives
- Failure to adequately explain funding a trust
- Failure to take debt of the estate into consideration (to include Medicaid Estate Recovery)
- Failure to explain next of kin to omit from a will if distribution is to someone else
- Potential signing and self proving affidavit issues
- Failure to properly pass burial plots
- Failure to include provisions for institutionalized spouse

