
Living Trusts

What is a living trust?

A living trust is a document that you set up if you want to use your property until you die and then pass it on to someone else. A living trust lets you do this without a will.

You have to transfer ownership and control of your property to a *trust* during your lifetime. You name a *trustee* to hold legal ownership of the property and to manage it. The people who benefit from the trust or will get your property are called *beneficiaries*. The trustee may be a person or a financial company, such as a bank. The trustee must follow the directions you put in the trust papers. The trustee also has to follow the law about managing the property.



Some people want a living trust as a way to avoid probate or avoid making a will. Be careful! Trusts are confusing and you should think about it carefully and get legal advice.

Can I be the trustee or beneficiary of a trust that I set up?

Yes. The person who sets up a trust and puts his or her property in the trust is called a *grantor*. A grantor can be a trustee **or** a beneficiary, but **not** both. If you (the grantor) are also the trustee, you manage the trust for the benefit of the beneficiaries.

What is the difference between an irrevocable and a revocable trust?

An irrevocable trust **cannot** be changed or ended after it is signed.

A revocable trust can be changed or ended by the grantor at any time, as long as the grantor is still competent.

Can a living trust avoid probate?

Yes. After your death, the trustee can give out the property in the trust to the beneficiaries without going to court. This avoids the cost and delay of probate. Also, this is a private process, unlike probate which makes the file public for anyone to look at. See our fact sheet, [S-1 Questions About Probate](#).

Are there other ways to avoid probate?

Yes. For example, if 2 people own all their property together in joint tenancy, there is usually no probate. When one dies, the property automatically belongs to the survivor. Also, there is no need to probate assets that name a beneficiary. For example, life insurance money goes automatically to the named beneficiary without probate. You can also use a Transfer on Death Deed instead of probate to give your house to someone when you die.

Is a living trust useful if I become unable to manage my property?

Yes. If the living trust is set up while you are competent, the trustee will manage the trust property for the beneficiaries if you become incompetent. But instead, you can set up a **custodial trust** to manage your assets if you become incompetent. **It is generally cheaper and easier to set up a custodial trust than a living trust.**

Which costs more, a living trust or a will?

Generally, it costs more to set up a living trust than to draw up a will. The legal fees to draft the trust papers are often high. A living trust only works if you transfer property to it. You usually need a lawyer to handle the transfers, especially if you transfer real estate. If the trustee is a financial company, it will charge fees to manage the trust.



Is a living trust a good idea if my assets are small?

No. A living trust is generally **not** the best choice for people who don't have a lot of property or money. A simple will should not cost much, particularly if you look around for a good attorney. Probate of a small estate should also cost less than a living trust.

Are there other drawbacks to a living trust?

A living trust only covers the property put into it. You still need a will for any assets you have that are not put into the trust. Also, putting assets into a trust may affect your taxes. Creditors may be able to get at your assets more easily.

Will a living trust protect my assets if I go into a nursing home or if I need home care?

Putting your assets into a trust can make it hard later on if you apply for Medical Assistance (MA) to pay for long-term care. For example, the state may force you to revoke (cancel) the trust, or you may not be able to get MA to pay for long-term care services, like a nursing home or home care. These possible problems are another reason to talk to an attorney about whether a trust makes sense for you.

Should I buy a living trust package?



Beware of anyone who pressures you to buy a living trust package. Do not deal with anyone who wants you to sign something right away or to pay money before you have a chance to do more research. Some companies only want to sell their pre-packaged plans. They don't care how well the plan meets your needs. **If a do-it-yourself trust is not done right, it can cause problems that cost money to fix.**

What should I do before setting up a living trust?

Talk to a lawyer and an accountant. Decide if a living trust is right for you. If you decide to set up a living trust, have a lawyer draw up the papers to make sure they fit your needs. A one-size-fits-all trust form may not help you.

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