

Living Trusts

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area)
www.nmbar.org/public/LREP

What is a living trust?

A living trust is an estate planning tool that will allow you to transfer your assets directly to your beneficiaries without requiring the property to go through probate. Probate is a legal process used to pass title to property that has not already been transferred by some other method, such as a living trust or joint tenancy with right of survivorship.

There are some basic terms to know if you are considering a living trust. As the owner of the assets to be transferred, you would be the one creating the trust and would be referred to as the "trustor", "grantor", or "settlor" of the trust. You would appoint a "trustee," who is responsible for managing and distributing your assets. The "beneficiaries" of the trust are those persons to whom the assets will be distributed. You should choose the trustee carefully since this person will have a duty to manage and distribute the assets of the trust strictly for the benefit of the beneficiaries.

What is the difference between a living trust and a will?

Although a living trust and a will are both estate planning tools, they differ greatly in relation to probate. A living trust becomes effective as soon as it is properly executed and funded. It is usually effective in avoiding probate. A will does not become effective until your death and may require a probate proceeding. Any assets which you neglect to place in the trust may still have to be probated in order to either place them in your trust or transfer them to your heirs.

Is there a "down-side" to having a living trust?

Two things that should be considered are:

- 1) A living trust is generally a very expensive estate planning document, and
- 2) Most living trusts are lengthy documents written in language that may not be understandable to someone who is not a trust attorney.

That means if you have questions about your trust and/or the property it owns, you will likely have to go back to the trust attorney and pay an hourly rate to get answers to your questions.

Are there other ways to transfer property?

Even without a living trust, there are ways to avoid having your estate probated. Other methods of transferring property include "joint tenancy with right of survivorship", payable-on-death accounts, transfer-on-death accounts and transfer-on-death deeds. As of June 15, 2001, the transfer on death deed became available as an option in New Mexico. However, the New Mexico transfer-on-death deed can only be used to transfer real estate located in New Mexico.

Do I need a living trust?

The following list represents several circumstances in which a living trust may be beneficial:



Living Trusts (Cont.)

1. **Large Estates:**

For 2013, the federal estate tax exemption is \$5.25 million (\$10.5 million for a married couple) and the estate tax rate for estates valued over this amount is 40%, effective through December 31, 2013. The estate tax exemption amount varies depending on legislative action and law changes affecting the rules governing federal estate taxes. An attorney who is experienced in drafting trusts can advise you as to ways in which to minimize estate taxes for large estates.

2. **Real property in more than one state:**

If your estate includes real property in more than one state, the estate may have to be probated in more than one state. Since this would mean extra time and expense for your heirs or beneficiaries, it may be more cost-effective for them if there is a living trust set up.

3. **A family member with disabilities:**

If you have a child or other family member with disabilities for whom you wish to provide financially, but who is not capable of handling his/her own finances, a living trust may be helpful. The trustee would be responsible for using trust assets to provide for the welfare of the person with disabilities.

4. **Children of different marriages:**

If you and/or your spouse have children from previous marriages, a living trust may help each of you to

provide for your respective children and alleviate conflicts between them after you die.

5. **Convenience:**

Since probate may take several months, many people create living trusts as a convenience to their beneficiaries. You should keep in mind that the cost of setting up a living trust is often at least the same as a probate proceeding. (Either a living trust or a simple probate may cost from \$500 to \$2000.) If you have a limited income, you may choose to allow the estate to be probated with the cost being taken from the proceeds of the estate.

Living trusts should not be set up without the assistance of a licensed New Mexico attorney, and forms should not be purchased by mail or from door-to-door sellers. If you are considering setting up a living trust or have questions about your current estate plan, you should consult with an attorney.