



A Guide to Living Trusts

Protect your family's future with a plan

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Introduction

Overview

Creating a living trust can offer powerful advantages compared to a last will. With a living trust, you can avoid the cost and delays of probate court proceedings and detail your wishes regarding who manages and receives your property after you are gone. With good planning, you can help ensure your family will be taken care of after you pass away.

It may seem like a new idea, but it is believed the “trust” actually originated during the Middle Ages. Knights leaving for prolonged engagements during the Crusades sought to protect their estate. They did this by transferring legal ownership to a trusted third party, where ownership would be transferred back to the knight upon his return.

Throughout history, the trust has been a time-tested solution to make sure your hard earned assets end up in the hands of the people you choose quickly and efficiently. This guide is intended to give you an overview of how a living trust works and the benefits it can offer.

The Smart Way to Avoid Probate

A living trust transfers your property to your friends and loved ones privately with less expense and complexity than a will when you pass away. Trust assets pass to your beneficiaries without the need to go to probate court. It’s called a “living” trust because it is created and takes effect during your lifetime. A will, on the other hand, does not take effect until after you pass away and assets passing under the will often can’t be distributed without court approval.

Key Benefits of a Living Trust

- ✓ Avoids the probate process
- ✓ Saves your beneficiaries court costs and attorney fees
- ✓ Keeps your business and personal affairs private

Flexibility Advantages

The flexibility of a revocable living trust is one of its main advantages. You can make amendments or end the trust anytime during your lifetime. You can add property to the trust, transfer property out of the trust, add or remove beneficiaries, name a new successor trustee, and sell, give or borrow against property owned by the trust.

When the time comes, the successor trustee you name in the trust will transfer your property to your beneficiaries. There's no need for the court to oversee the distribution of your property. The terms of the trust remain private and personal and need not become a part of the public record.

Who's Who in a Living Trust

Parties to the Trust

Grantor: The person who puts their property in the trust. The grantor is sometimes referred to as “trustor” or “settlor.”

Trustee: The person responsible for managing the trust assets. In a revocable living trust, the grantor and the trustee are commonly the same person.

Successor Trustee: The person who will manage the trust assets when the original trustee dies or becomes incapacitated. The successor trustee is in charge of managing the trust property or transferring it to the trust beneficiaries.

Beneficiaries: The people who will receive the benefit of the trust's assets. The grantor (you) is the original beneficiary.

Trust Anatomy 101

So, what is a trust, exactly? It's a legal entity into which a person transfers his or her assets. Title to the assets is transferred from you as an individual to you as a trustee. For example, the property held in John Smith's name would be transferred to “John Smith, Trustee of the John Smith Trust.”

A living trust allows you to direct the management and distribution of all your significant property (bank accounts, stock certificates, real estate, etc.) under one document so that it can be distributed quickly and easily without court involvement. Since it's a legal entity, the trust, not you, owns those assets once they are transferred to the trust. This transfer eliminates the need to go through the probate process to transfer your property when you pass away. The transfer of assets to the trustee should not be cause for concern. With a living trust, you retain control of your assets. Since you, the grantor, are usually the trust's initial trustee, you have complete control of your property. You can transfer property of the trust or add property to it... in one sense, a living trust is an easier way to keep track of all your assets and manage them as a single unit.

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Creating a Living Trust

A living trust is created with a document known as a declaration of trust or trust agreement. This is the legal document, which names your beneficiaries, describes your trust property and provides the terms of its management and transfer. You can designate someone else or an institution, such as a bank, to act as a trustee when you are unable to do so.

A living trust is a private document, and the distribution of the trust assets after your death is private as well. Conversely, many wills have to be proven valid by the court before the deceased person's property is appraised and inventoried. Only after this process may the deceased person's remaining property be distributed according to the will (or according to state law if no will exists).

It's easy to see how the probate process can take a long time to finalize. With a funded living trust, the probate court process is avoided, so you can pass your property to your beneficiaries without court proceedings. And should you ever become incapacitated, a living trust allows you to transition management of your assets to your successor trustee without going to court.

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Types of Living Trusts

Revocable and Irrevocable Trusts

A living trust (also called a revocable living trust, or *inter vivos* trust) legally holds title to an individual's assets transferred into the trust during the person's lifetime. The Latin phrase *inter vivos* translates to "among the living" since a living trust is created while you are alive.

You may revoke or change your living trust however you wish, anytime you like, as long as you're alive and competent. Conversely, an irrevocable trust generally can't be changed by the grantor. It may afford some tax benefits, but should only be created with the assistance of an estate planning attorney after evaluating the individual's specific legal needs.

Individual and Shared Trusts

An Individual Living Trust holds one person's property, while a shared trust holds the property of two or more people. For example, if you and your spouse create a trust together, you would identify what property is being transferred into trust, the items you own together and the items you own separately. You may own a home together, for example, but maintain separate bank accounts.

Two examples of the most common shared trusts are Joint Living Trusts and AB Living Trusts. Joint living trusts may allow for the entire trust to be changed by the surviving grantor after one of the grantors passes away. An AB living trust is a trust that does not allow the terms of the trust regarding the property of the first grantor to pass away to be changed after his or her death. This type of trust is often created by blended families. Both types of trusts have estate tax savings provisions to protect those with very large estates.

Living Trusts vs. Testamentary Trusts

A living trust differs from a testamentary trust in that it is created during your lifetime. You, the grantor, act as your own trustee as long as you are living and competent, and the beneficiaries you designate only receive your property after your passing.

When the grantor dies, or is unable to manage his or her affairs based on the opinion of one or more licensed physicians, the successor trustee assumes the powers you had to manage the assets you placed in the trust. The successor trustee has no authority to change the trust, only to manage the trust and distribute property according to the terms of the trust upon your death.

An individual trust cannot be changed after the grantor dies. As described above, the surviving grantor can change some terms of the joint and AB trusts. Neither joint nor AB trusts can be changed after both grantors have passed away.

The terms of a testamentary trust are detailed in a person's will and the trust does not exist until that person passes away. Generally, the will is submitted to the probate court, and when the proceedings are concluded, the court provides a written order creating the trust and transferring the beneficiary's share of the assets into it.

What Goes into a Living Trust

Protecting Your Major Assets

The following assets are commonly included in a living trust:

- Real estate
- Financial accounts (savings, brokerage, mutual funds, etc.)
- Stocks or bonds not held in a separate account
- Business interests (LLC membership interests, shares in privately held corporations, partnership interests, sole proprietorships, etc.)
- Intellectual property (patents, copyrights, trademarks)
- Jewelry, antiques, works of art and other personal items

Involving Children

If you are concerned that some of your trust beneficiaries could inherit trust property before they are capable of managing it, you can keep the property in the trust to be managed by the successor trustee. This includes a beneficiary under a certain age, or any beneficiary you feel is not yet sufficiently mature to handle their inheritance responsibly.

Handling Debts

Real estate held in a trust is often has a mortgage. If your beneficiaries receive a home with an existing mortgage, they would be responsible to make the mortgage payments. It's possible to direct that your trust pay off the mortgage before the property is distributed to your beneficiaries, but you must have enough assets to do so. This requires customized language in the trust, which should be drafted by an experienced estate planning attorney.

Assets Outside of the Trust

Protecting Other Assets

What happens to your other property that falls outside of the categories above? Property of lesser value need not be placed in a living trust because it may be exempt from probate or subject to a streamlined probate process.

Examples of assets not commonly held in trust include:

- Personal checking accounts
- Property you buy or sell frequently (i.e. property you don't expect to own at the time of your death)
- Automobiles (unless they are particularly valuable, such as vintage and/or rare automobiles)

Importance of a Pour-over Will

When you make a living trust, you can also create what is called a pour-over will. A pour-over will provides for the distribution of certain property that is not included in the trust, and allows you to name a guardian for minor children. Generally, a pour-over will transfers property that would pass through probate to the trustee of your trust when you pass away. The following assets are generally excluded from probate: (1) trust property, (2) assets held in joint tenancy, (3) assets for which there is a named beneficiary (such as life insurance proceeds, 401k plans, annuities, etc. Basically, if you have property required to go through probate when you pass away, a pour-over will can help ensure that the property is distributed to your beneficiaries according to the terms of your trust (the assets are “poured over” into the trust).

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Changing a Living Trust

Amendments

Change in life is inevitable and many circumstances will cause you to consider making changes to your living trust. A revocable living trust may be amended (changed) or revoked (ended) anytime you wish as long as you are alive and capable of making your own decisions. Flexibility is one of the primary advantages of a living trust.

People often want to amend their trust when a major life event happens. Common scenarios that would warrant amending your trust include marriage, having a child, the death of a spouse or beneficiaries, selling or giving away property designated to a trust beneficiary or change in your relationship with your successor trustee. A common reason to amend your pour-over will is to change the people you selected to be your executor, or guardian of your minor children.

Although you can choose to end the trust at anytime, it is often easier to amend an existing trust than to create a new one. For example, you may wish to change beneficiary, successor trustee or other provisions within the trust. Changing your trust document is a fairly straightforward procedure, requiring you to prepare an amendment to the living trust document.

If you make subsequent amendments, you'll need to refer to the original trust documents and all prior trust amendments. Changing your trust involves specific procedures and documentation, so it's prudent to seek the guidance of a legal professional.

Revoking a Living Trust

A living trust can be revoked at any time, and under some circumstances, it's the best approach to take. For example, you may want to revoke a living trust if you get divorced.

There are restrictions on who can revoke a trust, depending on the kind of trust it is. If you have an individual living trust, you as the grantor can revoke it yourself. A shared living trust or an AB trust can be revoked by one grantor—however, it takes both parties to amend it. That's because revoking the trust returns the property to the status quo before the trust was created.

Generally, revoking a living trust is a two step process. First, you sign and notarize a document revoking your trust. You then transfer the property you put into trust back to yourself (since you're a trustee as well as the grantor, you have the power to do this). By doing this, you're basically reversing the transfer of assets that you placed in the trust.

Planning for the Future

Failing to create a good plan for the future can result in unintended consequences. Without a plan that outlines what to do with your estate, the court can distribute your assets according to state law—even deciding who will run your business and manage your assets, regardless of your wishes.

If your estate goes through probate, those assets will be valued and listed in the court records and your creditors will be notified so they may make a claim against your estate.

With a living trust, you can better protect your family's financial future should you become incapacitated and when you pass away. A living trust allows you to distribute your assets to whom you want, the way you want, and when you want, without going through probate. By minimizing the costs in time and money to handle your estate, you maximize your beneficiaries' inheritance.

With a living trust you can:

- Distribute your assets according to your wishes, so the court doesn't make these decisions for you.
- Specify how our children's share of your property will be managed.
- Help you family avoid the hassle and cost of the probate process.
- Transfer management of your property to a successor trustee if you become incapacitated.

Questions?

For more information and to schedule a complimentary consultation, please don't hesitate to reach out and give us a call. Our team at Prepare + Record can be reached at **(562) 222-8906**.

Additionally, if you prefer to communicate by mail, you may send any inquiries or correspondence to our address at 8111 Firestone Blvd, PO Box 5042, Downey, CA 90241.

We look forward to hearing from you soon.

Making a living trust doesn't have to be complicated or costly. Prepare + Record can help you create the legal documents you need from the comfort of your home or office.