

ABOUT LIVING TRUSTS

The revocable living trust: a legal device to let you leave your property to family and friends without having it go through the slow, expensive probate court process — has been around for years. Because property left in a will usually must go through probate, living trusts have become a popular alternative. A probate-avoiding living trust is all that is needed by the 99% of the Americans. This much is sure; avoiding the delay and expense of probate is a sensible goal.

Probate was designed to ensure that a deceased person's will is certified valid by a court and that the person's property is distributed to its rightful inheritors. But for most families, when there is no dispute about the will, formal probate court proceedings are a waste of time and money.

Probate lawyers charge a hefty fee for transferring a deceased person's property to their own children, other close relatives, friends and perhaps a charity or two. Probate attorney and court fees often eat up about 5% of an estate (the property left at death). If there are complications, the fees can be substantially higher.

Things can get even worse when out-of-state real estate is involved. Usually, a deceased person's estate is probated in the probate court of the county where the person was living. But if the person owned real estate in a different state, it's usually necessary to have a whole separate probate proceeding there. That means surviving relatives must find and hire a lawyer in that state and pay for two probate proceedings.

Almost as bad as the expense of probate is the time it takes. Typically, probate takes a year or more. During that time most beneficiaries get nothing, except for a "family allowance" that the decedent's immediate family may request from the judge.

This delay is completely unnecessary. If the estate contains the usual things – a house, stocks, bank accounts, cars – the process of handing them over to the new owners should take no longer, after a death, than it does during life.

The main reason for setting up a revocable living trust is that property put in trust (including out-of-state real estate) **doesn't go through probate**. The people who inherit your property get possession of it quickly and easily after your death.

You keep complete control over the trust property. Because during your life you are the trustee of your living trust, you have complete control over the trust and all the property in it. You can: sell or give away property in the trust; transfer ownership of property you put in trust back to your own name; add property to the trust; change the beneficiaries; appoint someone else to be trustee; revoke the trust.

If you and your spouse create the trust together, you will both have to consent to the changes, although either of you can revoke the trust entirely.

You can set up trusts for young beneficiaries. If any of your beneficiaries might inherit trust property while too young to manage it, you can arrange to have someone manage the property for them until they're older.

The successor trustee can manage trust property if you cannot. You can give your successor trustee – the person who will take over at your death – the power to manage trust property if you become incapacitated. That way someone you've chosen is in charge, and your family doesn't have to court to have a conservator appointed to manage the property.

Despite all these advantages, a living trust is not a panacea that solves all estate planning problems.

If you're in mid-life and in good health, you may well conclude that you can get along just fine for a while without a living trust. You

can use a will to pass a few personal items, put your house in joint tenancy with your spouse (joint tenancy property customarily passes directly to the surviving owner at your death, without probate), and name a beneficiary to inherit whatever funds are in your savings account when you die (a pay-on-death account, which also bypasses probate).

Or you may want to establish a living trust but only transfer a few big-ticket, such as your house or business, to it. If you leave the rest of your property by will, if it isn't too valuable, and it goes to immediate family members, your estate will probably qualify for the simplified probate procedures that most states offer. And because probate fees are usually based on the dollar amount of the property that must be probated, the fees won't be too high.

Why wait to set up a living trust? The main drawback of a living trust, compared to a will, is the paperwork it requires. Setting up a living trust isn't difficult or expensive, but you must officially transfer ownership of property to the trust and keep written records of transfers in and out of the trust. You must also respect the legal difference between you and the trust. For example, if you want to sell trust property, you must do so in your capacity as trustee.

You can safely prepare a living trust yourself with our help. All you need to do is complete our questionnaire and plug in your specific information: the property you want to transfer by trust; the people you want to receive it after your death; and the person you want to take responsibility for transferring everything.

Once the trust document is signed in front of a notary public, and you officially transfer ownership of the property into the trust's name, you're done. After your death, the person you chose to take over can easily and quickly transfer the property to your beneficiaries.

FOR ASSISTANCE IN THE PREPARATION OF YOUR LIVING TRUST AND OTHER ESTATE PLANNING DOCUMENTS WHICH COME IN A PERSONALIZED BINDER.

Contact

1-DAY DOCUMENT ASSISTANCE

LDA: VENTURA COUNTY #33

(Main Office)

4354 Eileen Street Suite 100

Simi Valley, CA 93063

(805) 582-6172

(818) 884-3601

(661) 259-6910

Glossary of estate planning terms

Administrator: Person named by the court to represent the estate when there is no will or the will did not name an executor; also called a "personal representative."

Beneficiary: The person and/or organization who obtains the benefits of the trust.

Bypass trust: A trust which is set up to bypass the surviving spouse's estate, thereby allowing full use of the federal estate tax exemption for both spouses.

Codicil: A written change or amendment to a will.

Community property: A form of title for husband and wife that is recognized in 9 states. One of the primary benefits of community property is the federal income tax basis step-up to fair market value which occurs upon the death of either spouse; there can also be a step-down in basis where the fair market value is less than the asset's basis.

Conservator: An individual appointed by the court to administrate the affairs of an incapacitated adult.

Credit shelter trust: See bypass trust.

Estate tax: A transfer tax imposed on the value of property left at death; often called an inheritance tax or death tax.

Executor: The person or institution named in a will who is responsible for the management of the assets and the ultimate transfer of the property; also commonly referred to as a "personal representative."

Gift tax: A tax imposed on transfers of property by gift during the donor's lifetime.

Gift tax exclusion: As of 2009 the law permits the exclusion each year of the first \$13,000 in gifts made to any one donee; married couples may jointly gift tax free up to \$26,000 to any number of donees. The amount is subject to change by congress.

Guardian: One who is legally responsible for the care and well being of a minor. Appointed by a court, the guardian is under court supervision.

Intestate: Having made no valid will.

Irrevocable trust: A trust which the trustor does not have the power to revoke or amend.

Joint tenancy: A form of joint ownership in which the death of one joint owner results in the immediate transfer of ownership to the surviving joint owner or owners.

Life insurance trust: This is an irrevocable trust which is established for the purpose of excluding life insurance proceeds from the estate of the insured for death tax purposes.

Living (intervivos) trust: A trust created by a written legal document which is created during the lifetime of the trustor. Very often, this will be a revocable living trust which will be used as the ultimate vehicle for the distribution of the trustor's assets when the trustor dies.

Marital deduction: This is a deduction which is available for transfers between spouses, either during lifetime or at death; under federal law, there is a complete interspousal exemption from transfer tax for qualifying transfers.

Pour-over will: A will which is used in conjunction with a revocable living trust to "pour over" any assets which are not transferred to the trust prior to death.

Qualified terminable interest property ("Q-Tip") trust: A terminable interest that will qualify for the marital deduction if an appropriate election is made by the donor or executor. This type of vehicle is frequently used to avoid any transfer tax upon the death of the first spouse; it provides the surviving spouse with all income from the property during his or her life, but it enables the deceased spouse to retain control over the ultimate disposition of the property.

Revocable trust: A trust plan that gives the grantor the power to alter the trust terms or revoke the trust.

Tenancy-in-common: A form of joint ownership in which two or more persons own the same property. At the death of a tenant-in-common, ownership transfers to that person's designated beneficiaries or heirs, not to the other joint owner.

Testamentary trust: A trust set up in a will that only takes effect after death.

Testate: Having left a valid will.

Testator: The individual who creates a will.

Trust: A legal arrangement in which one person (the trustor) transfers legal title to property to a trust and names a fiduciary (the trustee) to manage the property for the benefit of a person or institution (the beneficiary).

Trustee: The person or institution who manages property according to the instructions in the trust agreement.

Trustor: The individual who establishes a trust; also can be referred to as the "settlor" or the "grantor."

Will: A legally binding document directing the disposition of one's property, which is not operative until death and can be revoked up to time of death or until there is a loss of mental capacity to make a valid will.

| | With No Will | With A Will | With A Living Trust |
|--------------------------------|--|--|--|
| At Disability | <i>Probate:</i> Court appoints conservator/guardian who oversees your care; must keep detailed records and reports to the court. Court controls all your finances and assets, approves all expenses. | <i>Probate:</i> Same as with no will. | No probate: Your successor trustee manages your financial affairs according to your instructions for as long as necessary. (In some states, conservator/guardian may be required for health care decisions.) |
| <i>Court Costs</i> | You pay all court costs, legal fees | Same as with no will. | None |
| At Death | <i>Probate:</i> Court orders your debts paid and possessions distributed according to state law, which may not be what you would have wanted. | <i>Probate:</i> After verifying your will, court orders your debts paid and possessions distributed according to your will. | No Probate: Debts are paid and possessions immediately distributed to beneficiaries by successor trustee according to your Trust's instructions. |
| <i>Court Costs</i> | Your estate pays all court costs and legal fees (often estimated at 5-10% of the gross value of your estate. Higher if your will is contested.) | Same as with no will. | None |
| <i>Time</i> | Usually 1-2 years or more before heirs can inherit. | Same as with no will. | Usually 4-6 weeks for smaller estates: a little longer for larger ones. |
| Flexibility and Control | <i>None:</i> Your property is controlled and distributed by probate court according to state law. Very easy for anyone to contest. | <i>Limited:</i> You can change your will any time, but it can easily be contested. Family has no control over probate costs or delays. | Total: You can change your trust at any time, even discontinue it. Your property remains under total control of your trust, even if you are disabled. Hard to contest. |
| Privacy | <i>None:</i> Probate proceedings are public record. Exposes family to unscrupulous solicitors and greedy heirs. | <i>None:</i> Same as with no will. | Total: Privacy preserved. No probate. Living trusts are not public record. |
| Minor Child | Probate court controls inheritance, appoints guardian. All decisions and financial transactions require court approval. Child receives full inheritance at legal age. | Same as with no will. Children's trust in will provides limited protection, but will must be probated first and cannot go into effect at your physical or mental incapacity. | No probate. Your appointed trustee manages inheritance and provides funds for expenses until child reaches age(s) you specify. Court approves guardian, but cannot overrule your choice of trustee and has no control over inheritance. |
| <i>Cost</i> | All court costs and attorney fees are paid from child's inheritance. | Same as with no will. | None |