

Even With a Trust, You Will Still Need a Will

# Living Trusts and Your Estate Plan

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Last month we wrote about the importance of having a well-drafted, recently reviewed will as the foundation of an estate plan. Although we think everyone should have a will, increasingly living trusts are being used as an important tool in your estate-planning kit. In this article, we'll review what living trusts are and how they work.

## Types of Trusts

Trusts are created while you're alive (intervivos) or through your will at death (testamentary). Trusts can be revocable, where you can change the terms, or irrevocable, where the terms can't be changed. The most commonly used intervivos trust is the revocable living trust.

Once you retitle your assets from your name into a revocable trust, they're removed from the probate estate but are still included in the taxable estate. Assets transferred to an irrevocable trust are taken out of both the probate and the taxable estate; the intention is that the grantor will be unable to pull back these assets.

Most people choose to establish a revocable living trust, which allows them the flexibility to change the trust's terms and retain control of the assets.

## What's a Living Trust?

A living trust is a legal document that names a trustee (or trustees) whose job it is to carry out the trust's terms. Typically, you are the trustee of your own trust, thus controlling your assets as long as you're able. In the trust document, you name successor trustees who will act on your behalf should you die or are unable to manage your assets. These might be family members, friends, attorneys or trust departments of banks. The trust also lists your beneficiaries and includes instructions to the trustee as to how you want your assets managed.

## Who Are the Parties Involved?

The "grantor" is the person creating the trust and placing assets in the trust. The "trustee" is the person or entity responsible for fulfilling the terms of the trust. A "successor trustee" will serve if the trustee can't or declines to serve. The "beneficiaries" are the people or organizations intended to get financial benefit from the trust.

## How Does a Living Trust Work?

Once you set up a living trust, you should retitle your assets to the trust's name. For instance, if your brokerage and checking accounts are held in the name of "Alice Adams," they now will be held in the name of

"Alice Adams Living Trust, Alice Adams Trustee under the Trust agreement dated April 15, 2021."

To change the registration of your accounts, you notify your broker and banker in writing of your desire to change the title on your accounts and provide them with a copy of the trust.

You then open new accounts in the name of the trust and transfer your assets from your existing accounts to the new trust accounts. Although the title of your account has changed, if you're the trustee of your own trust, you can continue to manage your accounts as you've done in the past.

Transferring real estate into the trust's name can be more complicated, as some states tax assets when you change registration. Your lawyer can advise you as to which assets should be retitled in the trust's name and which should not.

Although this process seems pretty straightforward, unfortunately we have seen some instances where our clients have paid the lawyer to put together the trust, but failed to retitle all of their assets into the name of the trust. For a living trust to work, the assets must be transferred into the trust's name.

## Advantage of Living Trusts

Why should you bother to set up a living trust in addition to your will? Here are some of the key reasons individuals choose to establish a living trust:

- **Avoids Publicity.** Without a living trust, your will and the amount of your estate becomes a matter of public record. For those seeking privacy, a living trust offers a solution.
- **Speeds the Distribution of Estate Assets.** If you have put all your assets in the living trust's name, your asset distribution will be expedited because going through the probate process takes time and costs money. We find this particularly true when transferring assets in a brokerage account.
- **Helps If You Own Property in Other States.** If you own property in more than one state, the executor of your estate may be required to open probate administration in each state where property is located. If the property is in the living trust's name, this problem can be avoided.
- **Avoids Expense of Probate.** If your assets pass to your beneficiaries by a will, your estate will have to go through the probate process. This involves fees that don't have to be paid if your assets are titled in the name of a living trust.



These probate fees vary from state to state.

■ **Avoids Confusion About Whom You Want to Act on Your Behalf.** If you become incapacitated, the trust document defines that your successor trustee should handle your affairs.

### Disadvantages of Living Trusts

■ **Cost to Have the Trust Prepared.** It does cost money to have a living-trust document prepared for you and transferring the assets into the trust's name may involve some fees. If you don't have that many assets and your estate is relatively small, it may not be worth the cost of setting up a living trust.

■ **No Protection From Creditors.** A revocable living trust offers no asset protection. In some states transferring your property to an irrevocable living trust can protect it from creditors. There are limitations on the protection, but this may be an advantage.

■ **No Statutory Fee Limitations.** In many cases, depending on each state, there's a statutory fee limit that cannot be exceeded in the probate process. That fee limitation doesn't exist with a trust.

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### Is the Living Trust a Will Substitute?

Establishing a living trust doesn't obviate the need for a will. If you have some assets that aren't in the living trust's name, the will dictates what happens to these assets. If you have minor children, the will is the document in which a guardian is designated. The will is also the document in which you name the executor or personal representative of your estate.

### Conclusion

In our next article we will discuss other aspects of estate planning. **B**

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