

What is a living trust?

A living trust is a legal document that looks much like a will. Like a will, it includes your instructions for whom you want to handle your final affairs and whom you want to receive your assets after you die.

But unlike a will, assets in a living trust avoid probate at death, court control of assets at incapacity (yours and your beneficiaries') and court control of minors' inheritances.

A living trust brings all of your assets together under one plan, making it easy to change and ensuring each beneficiary receives the amount you desire. Assets that remain in the trust are protected from beneficiaries' creditors, ex-spouses, predators and irresponsible spending.

For these reasons and more, a living trust is generally preferred over a will and makes the perfect foundation for most families' estate plans.

How does a living trust avoid probate?

If you die owning assets in your name, the probate court is the only way to verify your will (or apply the laws in your state if you die without a will), take your name off the titles and put the new owner(s) names on.

When you establish a living trust, you transfer ownership of your titled assets from your individual name to the name of your living trust. For example, from "John and Mary Smith, husband and wife" to "John and Mary Smith, Trustees of the Smith Family Trust."

Technically, *you* no longer own anything. Everything is now in the name of your trust. So there is nothing for the courts to control when you die.

Why would the court get involved if I become incapacitated?

It's the same principle. If you cannot conduct business due to physical or mental incapacity and your name is on the titles of your assets, only the court can conduct business for you. A spouse, parent or friend cannot sign for you, and a will cannot help because a will can only go into effect after you die. The court must step in to protect your interests, and once the court gets involved it usually stays involved until you recover or die.

The concept is simple, but re-titling your assets in the name of your trust is what keeps you and your family out

of the courts. The court system can be expensive, it takes time, it is a public process, and the court, not your family, has complete control. Most families prefer to handle these matters privately on their own schedules.

With a trust, do I lose control of my assets?

No. You keep full control. You can continue to do everything you could do before, including buying and selling assets. You can make changes or even cancel your trust. Not only do you not lose control, you will actually have *more* control over your assets when they are in a living trust than you do now.

How does a living trust work?

It helps to understand some of the legal terms.

■ **Grantor(s):** The person setting up the trust—you (and your spouse). Also called creator, settlor, trustor or trustmaker. As the grantor, only you can make changes to your trust. That's how you keep control.

■ **Trustee:** Manages your trust now. Usually this will be you (and your spouse) and/or another individual, or a corporate trustee (bank or trust company).

■ **Successor Trustee(s):** Will step in and manage the trust for as long as necessary if you (and your spouse) become incapacitated. At your death(s), your successor will distribute your assets according to your instructions. Successor trustees can be adult children, trusted friends and/or a corporate trustee. More than one should be named, in order of your preference, in case your first choice is unable to act.

■ **Beneficiaries:** Persons and/or organizations who will ultimately receive the assets in your trust after you die.

What happens if I become incapacitated?

Your successor trustee (or co-trustee) steps in and handles your financial affairs for you for as long as necessary. He/she can write checks, make deposits, apply for disability benefits, pay bills, even sell assets if needed.

No public court proceedings are required. Everything is done privately. If you recover, you simply start handling your affairs again and your successor trustee returns to being your successor. There is no complicated paperwork or procedure to regain control as there would be if the court were involved. There is also great peace of mind in

knowing that if this should ever happen to you or your spouse, you will be taken care of by someone *you* have selected, someone you know and trust—and not someone a court appoints to take care of you.

What happens after I die?

Your successor trustee (or co-trustee) will have the same responsibilities an executor would if you had a will. But because he/she does not have to report to the court, everything can be done more efficiently and privately. Your successor (or co-trustee) collects any income, pays your final bills, sees that tax returns are filed, and then follows your instructions for distributing your assets.

You should know that trustees are fiduciaries and they have a legal duty to follow your instructions. If your acting trustee does not follow the instructions in your trust, he/she could be held legally liable.

How is my trust prepared?

Your attorney will prepare your trust document from your decisions. You decide who will be your trustee(s), successor trustee(s), beneficiaries, and how and when they will inherit from you. After you have read and approved your documents, you will sign them and they will be notarized. Titles of your assets (home, other real estate, bank accounts, investment accounts, etc.) and most beneficiary designations will then need to be changed to the name of your trust. This is called "funding" your trust.

Is it difficult to fund my trust?

It's not difficult, but it will take some time. Start with your most valuable assets and work your way down. Your attorney will probably transfer your home to your trust for you and provide letters of instruction that you can follow to change other assets.

You do not want to leave your trust unfunded, because any assets you leave out of your trust will probably have to go through probate when you die and would be subject to court control if you become incapacitated. You may have well-written and well-thought out instructions in your trust document, but until you transfer your assets into it, your trust doesn't control anything.

Why change beneficiary designations?

Beneficiary proceeds, such as those from a life insurance policy, are intended to be available immediately upon

death and paid to the beneficiary outside of probate. But the court will have to get involved if your beneficiary dies before you or at the same time as you, is incapacitated or a minor when you die, or if you have named “my estate” as your beneficiary. If your beneficiary does receive the proceeds, he or she may not be responsible enough to handle such a large sum of money.

When your trust is the beneficiary, the proceeds will be paid to your trust. Your successor trustee can then use the funds to provide for a beneficiary without court interference and/or distribute them as you direct.

That said, there may be valid tax reasons to name your spouse as beneficiary of an IRA or other tax-deferred plans. Also, if your estate would be subject to estate taxes, you may want to consider a life insurance trust. Your attorney will be able to help you make the best decisions.

How should my beneficiaries inherit?

That is completely up to you. Options include lump sum distributions, installments, income matching, and keeping assets in trust to protect them from irresponsible spending, creditors, ex-spouses and predators. You know your beneficiaries and how they manage their own money.

What about minors?

If a minor inherits directly from you, the court will take control until the child legally becomes an adult. Then, after all guardianship expenses have been paid, the child receives the remaining amount in one lump sum.

If you set up a children’s trust within your living trust, the trustee can provide for minor children or grandchildren at your death or incapacity, until they reach the age(s) you want them to inherit—with no court interference.

This is better than having a children’s trust in a will because it cannot be established until after you have died and the assets have gone through the delays and expense of probate. If you are incapacitated, a children’s trust in a will cannot even go into effect—because, remember, *your will* cannot go into effect until after you die.

Is a living trust more expensive than a will?

Initially, yes. One reason is that a living trust usually has more provisions than a will because it deals with issues while you are living and after you die. A will only deals with issues after you die.

Benefits of a Living Trust

- Avoids the costs, delays and loss of control of probate at death, court interference at incapacity, and court control of a minor’s inheritance.
- Provides easier, more efficient administration of your estate.
- Is more difficult to contest than a will.
- Minimizes emotional stress on your family.
- Lets you control how and when your beneficiaries will inherit.
- Can protect assets from beneficiaries’ creditors, predators, ex-spouses and irresponsible spending.
- Brings all of your assets together under one plan, making it easier to make changes and to provide more fair and equitable distributions.
- Can be changed or cancelled at any time.
- Can reduce or eliminate estate taxes.
- Professional asset management available if you use a corporate trustee.
- Gives you maximum control, privacy and peace of mind.

Also keep in mind that the true cost of a will must include the costs of probate when you (and your spouse) die, the potential costs of a court conservatorship if you (and your spouse) become incapacitated, and the costs of a court guardianship if you leave assets to minor children.

Do I need to use an attorney?

For the best results, yes. An experienced attorney can provide valuable guidance and will prepare the documents correctly. You’ve worked hard all your life to build your estate. Having your living trust prepared by a professional will give you peace of mind, knowing it will work the way you want to protect your assets and those you love.

This information is from the bestselling book, *Understanding Living Trusts*® by Vickie Schumacher. It is available from Amazon and most bookstores.

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