

# LIVING TRUSTS



## What is a Living Trust?

A living trust lets you arrange how you want your property managed while you are alive and how your assets should be distributed after your death.

The individual who creates the trust (grantor) names a person who will serve as trustee and will follow the trust's terms after the grantor dies. While alive, the grantor usually may serve as a trustee and control the assets even though they belong to the trust.

It is called a living trust because it is created during your lifetime, and can be used while you are alive to specify how your property will be managed in case you become incapacitated.

A living trust may allow you to both avoid estate (death) taxes and the probate process. In California, where probate fees amount to approximately 5% of the gross estate, this results in a substantial savings to the estate. However, there are other estate planning devices which avoid probate, such as a joint tenancy, a life insurance policy, an individual retirement, etc.

A living trust may be easily amended at any time during the lifetimes of the founders to adapt to a growing family or new circumstances. It will also provide for a smooth and immediate transition of management and use of the assets at the death of one or both founders.

## What is the difference between a Living Trust and a Will?

Revocable living trusts have certain things in common with wills, but they also have important differences. Like a will, a revocable living trust lets you direct how and to whom your property will be distributed after your death. You appoint a trustee to manage your trust, just as an executor would

manage your will. The trustee holds your assets and distributes them according to the instructions you specify.

A will becomes a matter of public record during the probate process, and a copy can be obtained upon request to the Surrogate's Court. A living trust is a private document that is not subject to public scrutiny.

## Tips for establishing a living trust...

When you establish a living trust, you must transfer your property from your own name to the trust. This is called "funding the trust."

For a living trust to take effect, legal title of the assets is transferred by the grantor(s) to a person called a trustee(s). For example, title to any bank accounts, stock certificates or real estate owned by the grantor must be transferred into the trust.

Contrary to the impression created by many living trust salespeople, the grantor must take affirmative steps to transfer assets and fund the trust. Merely executing the living trust itself will not cause the trust to become funded.

Any property that you leave in your own name passes through probate as part of your estate. Property held as "Joint Tenancy with Rights of Survivorship" automatically passes to your co-owners and doesn't need to be placed in a trust.

Although a living trust will save probate fees and estate taxes, it will produce no income tax savings. The grantor is treated as the owner of the trust for income tax purposes, and must report all trust income on his or her personal return under the "grantor trust" income tax rules.

A trust can be contested in a special proceeding. There is no blanket rule that a living trust cannot be contested.

Check your Medicaid eligibility. The living trust might make you ineligible for Medicaid-covered nursing home care. If you create a trust within five years of the time you apply for Medicaid, the government assumes that your trust assets are available to pay for your nursing home care. The laws are complicated and change frequently so consult an attorney who knows Medicaid rules before creating any trust, or giving away any property.

## Be aware, however, that these trusts may not be for everyone.

You will pay fees to establish and manage a trust. Make sure your estate is large enough to justify those fees, which can vary widely. Before you take action, discuss the pros and cons with a trusted attorney and financial advisor.

*For more information about living trusts and related topics, please visit the following websites:*

**Federal Trade Commission**

[www.ftc.gov](http://www.ftc.gov)

**American Bar Association**

[www.abanet.org](http://www.abanet.org)

**Nolo Press**

[www.nolo.com](http://www.nolo.com)

**AARP**

[www.aarp.org](http://www.aarp.org)

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