



UNDERSTANDING LIVING TRUST

Frequently Asked Questions.

A living trust is an estate planning tool increasingly used by individuals and families as a way to pass on property while avoiding costs and delays associated with probate. It is one of the most important documents you can prepare in your lifetime. For this reason, it's essential you understand exactly what it can do for you, your estate, and your heirs.

What is a Living Trust?

A living trust, specifically a revocable living trust, is a legal document that places your assets—investments, bank accounts, real estate, vehicles and valuable personal property—in trust for your benefit during your lifetime, and spells out where you'd like these things to go upon your death. Because it is revocable you can cancel or change it at any time during your lifetime.

You name yourself as the trustee (spouses can be co-trustees) and remain in complete control of your assets, moving them in and out of the trust as you wish. One difference from a will is that you also name a 'successor trustee' who will be your representative upon your death and transfer your assets directly to your beneficiaries according to your wishes.

Also, should you become incapacitated, your successor trustee would act on your behalf, handling financial issues and even managing property or business assets for you. It's all clearly spelled out and, unlike a will, can be handled without any involvement by the courts.

Who are the parties to a Trust?

The Grantor - This is the person who creates the trust, and usually the only person who provides funding for the trust. More than one person can be the grantors of a trust, such as when a husband and wife join together to create a family trust.

The Trustee - This is the person who holds title to the trust property and manages it according to the terms of the trust. The grantor often serves as trustee during his or her lifetime, and another person or a corporate trust company is named to serve as successor trustee after the grantor's death or in the event the grantor is unable to continue serving for any reason.

The Beneficiary - This is the person or persons who are entitled to the benefit of any trust arrangement.

Why get a Living Trust?

The ability to bypass the courts is one of the big pluses of a living trust. A will has to go through probate, which is the thorough but lengthy and painstaking legal process used to value your estate, settle any debts, pay taxes and transfer assets to your heirs. Any assets that are registered only in the name of the deceased must go through probate. Probate costs and timelines vary by state, but generally, the bigger the estate, the higher the costs (anywhere from 5-10% of the value of your assets) and the longer the time (anywhere from nine months to two years) until the assets are distributed.

Another big advantage of a living trust is privacy. A will is a public document, open for all to scrutinize and possibly contest. Probate itself is open to public view, so anyone can see the details of your estate. In contrast, a living trust is private, generally more difficult to challenge, and avoids the public probate process altogether.

Can someone else hold title for me "in trust?"

Some people who do not wish their names to show as titleholders make private arrangements with a third party Trustee; however, such an arrangement may be illegal, and is always inadvisable because the Trustee of record is the only one who is empowered to convey, or borrow against, the property, and a Title Insurer cannot protect you from a Trustee who is not acting in accordance with your wishes despite the existence of any private agreement you have with the Trustee.

Is a Trust the best way to hold my property?

Only your attorney or accountant can answer this question; some common reasons for holding property in a Trust are to minimize or postpone death taxes, to avoid a time consuming probate, and to shield property from attack by certain unsecured creditors.



Priority Title © 2023

This information is provided as a general educational resource and is not intended to, and shall not be deemed to, constitute legal advice. For questions concerning a specific situation, please contact an attorney or tax professional.