

# Living Trust Basics

## Stay in control of your estate throughout your lifetime

A Living Trust (also called an *inter vivos* trust) is one of the best estate planning tools. It allows you to stay in control of your affairs throughout your lifetime. You decide who will handle your affairs if you become disabled. You ensure that your assets go to whom you want, when you want, at the least cost, and maintain your privacy by staying out of the Probate Court

While there are dozens of different kinds of trusts, they can all be divided roughly into two categories: **testamentary trusts** and **living trusts**. While a testamentary trust is one that is created by a will and thus takes effect when the grantor dies, a living trust is created and takes effect during the grantor's lifetime.

Do not think of a living trust, even a revocable one, as a "will substitute." Instead, think of it as a "will supplement." You may still need a Last Will and Testament in order to provide for the disposition of any property that is not in trust but it may never be used if your trust is properly constructed.

## The Advantages of a Living Trust

There are several benefits and advantages to establishing a living trust instead of (or in addition to) a testamentary trust. Indeed, a living trust is the main feature of modern estate planning, and can be used for several purposes:

- avoiding probate
- managing assets flexibly
- taking advantage of tax laws
- maintaining privacy

Let's look at each of these aspects in turn.

### ***Avoiding Probate***

Avoidance of probate is one of the main reasons that people create living trusts. The document allows you as the grantor to decrease the value of your “probate estate”--the total value of the all the property in which you hold an interest at the time of your death. Upon your death, property that is not jointly held, does not have a named beneficiary, or is not in a trust must go through the probate process.

However, if you create a living trust, the property in that trust will not be part of your probate estate and thus not subject to the probate procedure. It is a way for you, therefore, to avoid the uncertainty, complexity, and cost of Probate Court by declaring your donative intent while you are alive.

### ***Managing Assets Flexibly***

Most living trusts are revocable. This means that you can amend, add to, or even completely terminate the trust agreement. In addition, you can name trustees and beneficiaries yourself, and change the designation of trustees and beneficiaries, with much less hassle than if you were rewriting your will.

You can also designate a professional trustee (such as a bank or other financial institution) to manage you assets and give you periodic updates. This allows you to direct your investments but be free of the burden of day-to-day activities.

### ***Taking Advantage of Tax Laws***

There are three basic taxes that are impacted by a living trust:

- 1) Estate tax** (imposed on property transferred by a will)
- 2) Inheritance tax** (imposed on person who inherits property from another)
- 3) Gift tax** (imposed when property is gratuitously transferred to another person)

If you establish a living trust, you can avoid the estate tax and inheritance taxes that would result from a testamentary trust. However, you may still be subject to the federal gift tax.

A revocable living trust carries no income tax advantages. A trust is presumed to be revocable unless it contains specific language expressly providing that it is irrevocable. An irrevocable trust, on the other hand, can take increased advantage of tax laws. For example, they are often not subject to estate tax.

A popular type of irrevocable living trusts is the “AB trust.” An AB trust allows a married couple to ensure that the surviving spouse reaps financial benefits from the couple’s estate while he or she lives, and allows them to pass the maximum amount of property to their beneficiaries (usually their children) after they die.

## ***Maintaining Privacy***

Unlike a testamentary trust (also called a will), which is a public document, a living trust is a completely private document. This means that no one, other than the beneficiaries, has a right to know the contents of a trust. This privacy can help to avoid bitter feuds over the distribution of assets.

## **Creating a Living Trust**

A trust establishes a relationship among three parties:

- 1) The *grantor* (who wishes to create a trust relating to property he or she owns)
- 2) The *trustee* (who has duties and obligations relating to handling the property)
- 3) The *beneficiary* (who receives the benefits of the property)

As a grantor (also known as the settlor), you have the power to designate the trustee and beneficiaries. You may name yourself as the trustee and/or beneficiary, or you can select another person as a trustee and transfer title of the property to them.

For any trust to be valid, it must:

- involve specific property
- reflect the grantor’s intent to donate the property
- be created for a lawful purpose

In order to create a trust, you must:

- be mentally competent
- designate a trustee and at least one beneficiary
- sign the trust document
- have the trust document notarized

Once the trust is established, the main relationship with respect to the property is between trustee and beneficiary (though the grantor may retain a power to amend or revoke the trust).

### ***The Importance Of Estate Planning For Women***

*There are some interesting and sobering statistics about estate planning that women should pay particular attention to. These suggest that problems in the absence of a formal estate plan disproportionately affect women.*

*Consider this:*

- *75% of all married women will become widows at some time in their life.*
- *The average age in which a woman becomes a widow is an astonishing 55.*

*When a family has failed to plan, it is likely the wife and mother who are left to deal with the mess.*

*Also consider this:*

- *Some agencies have suggested that there is a 50% chance one will need nursing home care at some point in their life.*
- *Women are three times more likely than men to become caregivers for their spouse or for one of their parents.*

*Interestingly, women now own 70% of all publicly traded stock. 75% of all inheritances go to women.*