



Austin

LIVING TRUST®

The Estate Planning Law Firm™

WILLS & TRUSTS

THE LIVING TRUST ALTERNATIVE TO PROBATE

What is a living trust?

A living trust is a *legal document* that looks a lot like a will. In fact, it does what most people think a will does -- and much more. A living trust is controlled by *trust law* not probate law, so the court is not involved. Because the living trust avoids probate, all expensive court proceedings and delays are eliminated, your privacy is preserved, and emotional stress on your family is minimized. It can reduce or eliminate estate taxes and is extremely hard to contest.

Who should have a living trust?

Just about anyone -- married or single, old or young -- can benefit from a living trust, especially if you have children or own real estate. Single parents especially should have one, because only a living trust can completely prevent a probate conservatorship for the assets of minor children. If you want to make sure your loved ones (spouse, children *or* parents) will not have to deal with probate if something happens to you, you should have a living trust.

How does a living trust avoid probate?

When you set up a living trust, you simply transfer all of your property from your individual name to the name of *your trust*, which *you* control -- such as from "John and Mary Smith, husband and wife" to "John and Mary Smith, Trustees Under Trust Dated 7/4/2004". Your trust now controls everything, so there is nothing to probate when you die or become incapacitated. The concept is very simple, but this is what keeps you and your family out of probate.

Is it hard to transfer property into my living trust?

It's easy and your attorney should show you how to do it when you set up your living trust. All of your real estate and other property with formal titles (checking and savings accounts, stocks, CDs, insurance, mutual funds, vehicle titles, etc.) must be re-titled in the name of your trust. As you acquire new property, just title it in your trust name.

Do I lose control of the property I put into my trust?

Absolutely not. Your living trust is *revocable*. You keep full control over your property. As "trustee" of your living trust, you can do everything you could do before -- buy and sell property, make changes, even cancel your trust at any time. *Nothing changes but the names on the titles.* You even file the same tax returns.

If something happens to me, who has control?

Usually married couples are "co-trustees", so either of you can act and have control if one of you becomes incapacitated or dies. If something happens to both of you, or if you are the only trustee, your "back-up trustee" will take over for you.

What does a back-up trustee do?

If you become incapacitated, your back-up trustee can immediately step in to look after your care and keep your financial affairs in order as long as necessary. He or she uses your assets to pay your household bills, medical expenses, insurance, taxes, etc. When you recover, you resume control. At your death, your back-up trustee pays your debts and distributes your property according to your instructions.

Who can be back-up trustees?

Back-up trustees can be individuals (adult children, other relatives or trusted friends) and/or a bank or trust company. If you select an individual, you should name alternates in case your first choice is unavailable or unable to act on your behalf. Your back-ups don't have to live in the same state you do, and they don't need special training or education -- *just trustworthiness*.

Is a living trust expensive?

Not when compared to probate costs. A simple living trust (including durable power of attorney for financial matters, health care power of attorney, pour-over will, living will or health care directive, real estate deed to transfer your home into your trust, and detailed trust titling instructions) should cost about \$1,000. Fees may vary depending on how complex your plan is, where you live, if you own multiple real estate properties, if you need additional tax planning, etc. Make certain you get an estimate in advance.

Should I have an attorney do this?

Definitely. This is a legal document. Don't try to do this yourself -- you could be creating some real problems later on. Remember, this is *your family*. It's not worth the risk. You need an experienced attorney to advise you on your situation and to properly prepare the legal documents -- preferably one who specializes in living trusts.

How long does it take to get a living trust?

It should only take a few weeks to prepare the legal documents after you make the basic decisions. Then allow time to change titles to your trust name.

But I don't have that much. Why should I be concerned about probate?

Everyone should be concerned about probate because it can affect any size estate, large or small -- especially those with real estate. And probate costs generally take a greater percentage of small estates than large ones.

What is probate?

Probate is the legal process through which the court makes sure your debts are paid and your property is distributed according to your will when you die. If you don't have a will, the state in which you live has written one for you. The probate court can also take control if you become mentally or physically incapacitated.

- **It's expensive.** Attorney and executor fees and other costs must be paid from your estate before anything goes to your heirs. These costs are usually estimated at 3-5% of your estate's *gross* value (*before* any debts are paid). So, if your home is valued at \$90,000 when you die, probate fees will be calculated on the full \$90,000, even if the mortgage is \$75,000.
- **It takes time** -- usually 1-2 years.
- **Your family has no control.** The probate process has control, and it can be very frustrating for your family to have to pay for the court to tell them who gets what and when. You can imagine how this can lead to all kinds of family disputes.
- **Your family has no privacy.** Probate files are open to the public, so anyone can see what you owned, to whom you left it, and how to contact them.

Doesn't a will avoid probate?

Contrary to what many people have been led to believe, *a will does not avoid probate*. In fact, a will is the tool that the probate court uses to learn what you want done when you die. It *must* be admitted to the probate court to be verified and legally enforceable.

Also, because a will can only go into effect *after* you die, it provides no protection if you become mentally or physically incapacitated. You could easily end up under the control of the probate court *before* you die.

Why would the probate court get involved if someone is incapacitated?

If you are incapacitated and your property has to be sold or refinanced, *only the probate court* can do it for you through a *conservatorship (living probate)* -- even if you have a will. Remember, a will can only go into effect at death. Living probate doesn't replace probate when you die -- your family could have to go through probate *twice!*

If I am incapacitated, can't my child act for me by using my durable power of attorney?

Maybe. Some companies only accept a durable power of attorney if it is their own form. Other companies will not accept them at all. And by giving someone your durable power of attorney, you also give up control. The person you name can do anything you could do with your property.

Doesn't joint ownership avoid probate?

Putting other names on your accounts or property for convenience generally means that person is a co-owner with you. This means that asset is available to the co-owner's creditors, through bankruptcy, lawsuits or divorce. The co-owner may not intentionally take your money, they may not have a choice. If the co-owner becomes incapacitated or dies with or before you, the asset may still end up in probate.

If I name my children as beneficiaries on my property, doesn't that avoid probate?

A beneficiary designation, also called Transfer on Death (TOD) or Payable on Death (POD), makes the person you name the owner of the property at your death. TOD's do not always avoid probate and cannot protect you if you become incapacitated. If you decide to change your beneficiary, the process

can be complicated with additional expense. Also, if your beneficiary is a minor or incapacitated, the assets you leave to that person will be controlled by the probate court.

Are living trusts new?

No. Developed by the Franciscan Monks in A.D. 1224, the living trust has been continuously used for centuries. It is legal in all 50 states.

Is it hard to set up a living trust?

No, it's as easy as 1, 2, 3!

1. Make your decisions on who to put in charge when you are no longer able to act and who gets everything after you die.
2. Complete a short questionnaire (about 45 minutes worth of work) and have your attorney interview.
3. Review and sign the documents and transfer your assets to your trust name.

How can I learn more about living trusts?

To learn more about our living trust estate plans, please schedule a free one-hour consultation, which can be held by phone or in our office. We look forward to talking with you. There is no better time than the present to have an up to date estate plan that avoids probate 100% and gives you peace of mind!

For more information contact:



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