



QUESTIONS & ANSWERS – HOW DOES A LIVING TRUST WORK?

Are Living Trusts New?

No. The "modern" living trust was developed by the Franciscan Monks in A.D. 1224.

I Don't Have That Much. Do I Need A Living Trust?

Yes, especially if you own real estate. The less you have the more you should be concerned about unnecessary probate expenses. A smaller estate, for example, usually loses a greater percentage of its value to probate costs than a larger estate.

Are All Living Trust Documents The Same?

No. There is no "standard form" for a living trust. The quality of trust documents varies from attorney to attorney. Some attorneys use "generic" trust forms, which usually are not very detailed or organized. Experienced living trust attorneys, on the other hand, often have developed their own comprehensive trust documents as a result of their extensive trust experience.

Should I Have An Attorney Set Up My Living Trust?

Definitely. Don't try to do it yourself. You could be creating some real problems later. If you try to copy someone else's trust document, then you may end up with something that does not apply to your situation. Remember, a living trust is a legal document, and this is your family. It's not worth the risk. You need to find the right attorney (preferably a living trust attorney) to help you.

Should I Name My Attorney In My Living Trust?

No. Your trust instructions can be carried out privately by your trusted family members or friends if you become incapacitated or die. They can hire an attorney if they feel they need one, but there is no legal requirement to name an attorney in your trust.

Do I Have To Stay With The Attorney Who Prepared My Trust?

No, you are under no obligation to continue using the attorney who prepared your trust. Another attorney can work on your living trust. Just make sure you select an experienced living trust attorney.

Can I Change Or Revoke My Living Trust?

Yes.



Is It Difficult To Change My Living Trust?

Not if you use an experienced living trust attorney.

When Do I need to Update My Living Trust?

Update your living trust any time it no longer says what you want done. Any major change in your family such as marriage, divorce (especially if you divorce or remarry), death, adoption, birth, etc., should cause you to review your trust. Contact your attorney every two or three years to ask if there have been any changes in the law or tax code that could affect your trust.

You should also consider changing your trust if one of your trustees or guardians can no longer fulfill his or her responsibilities, if your children are now grown and on their own, or if your financial situation changes substantially. Do not write on your original trust document! It must not be altered. Have your attorney prepare an amendment to your trust that will be signed by you and notarized.

Is A Living Trust Expensive?

Not compared to the costs of probate. Most people should be able to get a simple living trust for \$1,200 to \$1,700. Costs will vary depending on where you live, if you own multiple real estate properties, if you need special provisions, additional tax planning, etc.

Is The Cost Of Setting Up A Living Trust Tax Deductible?

No. The costs of the trust, durable power of attorney, pour-over will, etc., are not deductible items. However, costs specifically relating to estate tax planning such as the additional cost of the special tax planning provisions may be tax deductible. Check with your tax adviser and have your attorney allocate a portion of your bill to estate tax planning if you are setting up a tax planning trust.

How Long Does It Take To Get A Living Trust?

Under normal circumstances, it should only take a few weeks to prepare the legal documents after you make the basic decisions. After signing your documents, allow a few more weeks to re-title your property and beneficiary designations in the trust name.

Do Married Persons Each Have To Have A Separate Living Trust?

No. In fact, most married persons prefer to use a joint trust or a common tax planning trust. Separate trusts between spouses are most frequently used in a remarriage situation or when a spouse wants to keep certain assets as his or her separate property.



I Am A Single Person. Do I Need A Living Trust?

Yes. Single persons have a much higher risk of probate than married couples.

Can Two Single Persons Have A Joint Living Trust Like Married Couples Do?

Yes, two single people can create a joint living trust.

If I Set Up A Living Trust, What Happens To My Old Will?

When you sign your living trust documents (specifically your pour-over will), all previous wills are revoked.

If I Replace My Old Will With A Living Trust Do I Have To Notify The Attorney Who Prepared It?

No. Even if your attorney kept a copy of your will there is no requirement that the attorney be notified. Your new pour-over will revokes any previous will. Destroy all old wills you have in your possession (but only after you have signed your living trust!) to avoid any confusion.

Am I Required To Give A Copy Of My Trust To Anyone?

No, you do not need to give a copy of your trust to anyone nor do you need to file or record it anywhere to make it effective. However, you may want to discuss it thoroughly with each of your back-up trustees so they can be familiar with your plans. Consider removing the distribution provisions from any trust copy you give to your back-ups or family members. You may not want them to know how you have distributed your estate, especially if you later change your mind.

Some companies may want to see a copy of your trust when you add your trust name on your accounts. They will usually accept either a copy of your certificate of trust or copies of the first page and signature page of the trust to satisfy their requirements. If they insist upon having a copy of your entire trust (usually required for real estate transactions), protect your privacy and don't allow them to copy your distribution provisions.

Do I Have To Register My Living Trust Document?

No. Some states require you to file a short form certificate of trust to identify certain basic information about the trust such as its date, the names of the grantor, and acting and back-up trustees. However, the trust document itself is private and does not have to be registered or recorded.



Where Should I Keep My Living Trust Document?

Expect to receive two original living trust documents. Keep one in your safe deposit box or a similar secure place. Make sure that your safe deposit box is rented in your living trust name so your back-up trustee has access if something happens to you. Keep the other original at home, so you can conveniently review it from time to time. Never keep all of your original documents in the same place, because they could be misplaced, stolen, destroyed in a fire, etc.

Should All Of My Property Be Put Into My Living Trust?

Yes. Any property not correctly titled in your trust name is outside your trust estate plan and could be probated.

Do I Lose Control Of The Property I Put Into My Living Trust?

Absolutely not. Your living trust is revocable. You keep full control of your property. As trustee of your living trust, you can do everything you could before: buy and sell assets, make changes, even cancel your trust at any time. Nothing changes but the names on the property titles and beneficiary designations.

Who Transfers My Property Into My Living Trust?

Except for the quitclaim deed to living trust (which should be prepared by your attorney), you can easily transfer your property into your trust yourself by following the instructions and forms your attorney should provide. Your attorney should allow you free telephone or office consultations if you have questions later on.

Can One Living Trust Hold All Of My Property, Including Property Located In Other States?

Yes.

Is It Expensive To Transfer My Assets Into My Living Trust?

No, there should be only be the nominal expense of recording a real estate deed, issuing a new car title, and mailing expenses to have stock certificates reissued in trust name.

What About Adding Other Persons On My Accounts, Deeds, Etc. After I Have Set Up My Living Trust?

Don't do it. Your living trust eliminates the need to have any other person on your property titles. Adding the trust name protects the property from probate, while adding other names may destroy your trust protection and may expose you to a lawsuit or bankruptcy.



How Should My Assets Be Titled?

Your attorney will tell you the exact wording you should use, but it will probably be similar to the following:

If you are single:

"Your name," Trustee under trust dated "insert the date you signed your trust."

Example: Robert G. Price, Trustee under trust dated January 15, 2005.

If you are married:

"Your name, your spouse's name," Trustees under trust dated "insert the date you signed your trust."

Example: Henry C. Price, Nancy C. Price, Trustees under trust dated January 15, 2005.

The designation "UTD" is often used as a shortened version of "under trust dated." Some companies prefer to use "UAD," meaning "under agreement dated."

My Spouse and I are Co-Trustees of our trust. Do we use "and" or "or" between our names?

A properly prepared trust will permit each of you to sign without the signature of the other. Government regulations frequently require specific wording for trust titles. For example, companies regulated by the FDIC (banks and savings and loans) require the word "or" be used between the trustee names, while companies regulated by the SEC (brokerage companies, etc.) require the word "and." Let the company insert whichever word they require. Realize that some companies will still require all acting competent trustees to sign.

Do I Have To Appraise My Property When I Transfer It Into My Living Trust?

No.

Will My Real Estate Be Reassessed If I Transfer It To My Living Trust?

No.

Will I Have To Pay Taxes on the Property I Transfer To My Living Trust?

No new taxes result from creating and funding your trust.



Does The Property In My Living Trust Receive The "Step-Up In Basis" After My Death?

Yes.

Will I Lose Any Income Tax Deductions By Placing My Property Into My Living Trust?

No.

Can I Still Deduct My Mortgage Interest If I Put My Home Into My Living Trust?

Yes.

If I Put My Rental Properties Into My Living Trust, How Are The Income And Expenses Treated?

Rental income and expenses will be reported on your individual income tax returns just as before.

If My Home Is In My Trust And I Sell It, How Do I Handle The Proceeds?

Deposit your house sale proceeds into whatever savings account or investment you choose. Just be sure the account is titled in your trust name. Nothing has to be done to the trust document itself.

Do I Lose My Capital Gains Exemption If I Put My Home In My Living Trust?

No. You still qualify for the exemption when you sell your home, if you meet the other requirements for the exemption.

What If I Own Real Estate In Shares With Another Person?

You quitclaim your share of the real estate to your living trust. The other owner's share is not affected.

Do I Need The Permission Of My Mortgage Company To Transfer My Real Estate To My Living Trust?

No. Your mortgage company is not involved because its legal rights are not affected. It can still foreclose on real estate re-titled in your trust name if you fail to make your mortgage payments.



Will Setting Up A Living Trust Require Me To Open New Accounts?

No. Your existing accounts (checking, savings, brokerage, etc.) may be re-titled in your trust name. Be aware, however, that you may be required to open a new account if you have already added other names on your account.

Do I Have To Put My Trust Name On My Checks?

No, but we do recommend you add your trust name when you reorder your checks. This helps you become familiar with your trust name and serves as a reminder that all of your property must be correctly titled in the trust name to be protected from probate.

What About Registered Animals Such As Horses, Cattle, Etc.?

Have the certificate of ownership registration reissued in the trust name, or assign the registration certificate to the trust. Your attorney should provide you the required assignment forms.

What Do I Do With My Income Tax Deferred Savings?

Your trust cannot be the owner of your IRA, Keogh, 401(K), or qualified annuity, because it would destroy the tax-deferred status. However, your trust can be named as beneficiary.

First, check with your plan administrator, because the laws are complex and different plans may have different rules for distribution. As a general rule, if you are a single person, we recommend you name your trust as primary beneficiary, and if you are married, we recommend you name your spouse individually as primary beneficiary and your trust as contingent beneficiary. This gives the surviving spouse the option of "rolling over" the proceeds into his or her IRA and deferring payment of income taxes. If your spouse does not survive you, the proceeds are paid to your trust.

Should My Safe Deposit Box Be Rented In My Living Trust Name?

Yes. This is how your back-up trustee will gain access to your important papers. Having the first back-up trustee's name on the rental agreement does not accomplish the same thing. If your second back-up trustee needs to act, and the box is not properly rented, they may have to get permission from the probate court to gain access to the box.

Should My Homeowner And Automobile Insurance Policies Be Put Into My Living Trust?

Yes. Ask your insurance company to include your living trust on your policies as an "additional insured." This means that you are insured as an "individual" and also in your capacity as "trustee" of your trust. There should be no additional cost to do this.



Who Should I List As Beneficiary On My Life Insurance?

Name your trust as the beneficiary. This directs that the death proceeds will be paid directly to your trust, then distributed according to your instructions. If you own your life insurance, re-title the policy ownership to your trust.

Are My Bank And Savings Accounts Still Insured If I Re-title Them In My Trust Name?

Yes. Any account you have that is insured by the FDIC will continue to be insured after you re-title it in your trust name – up to \$100,000 per institution. Remember, all accounts titled in the trust name are combined for FDIC insurance coverage, so do not keep more than \$100,000 at any one FDIC insured institution, if you are concerned about FDIC insurance coverage.

Can Interests In My Family Corporation Be Put Into My Living Trust?

Yes. Your stock certificates will be re-issued in your trust name. Nothing else needs to be done. This includes stock in sub-chapter S (sub S) corporations. The corporation and the other shareholders are not affected.

What About My Partnership and Limited Liability Company Interests?

Your partnership or membership interest is "assigned" to your trust. The other partners and the business assets are not affected.

What About Property I Acquire After I Set Up My Trust?

Have the new property titled in the trust name. You don't have to change anything in your trust documents.

What If I Buy Property In Another State?

Before buying property (especially real estate) in another state, make sure it can be titled in the same way as in your home state. An attorney or title company (for real estate) can tell you if the title you want to use is acceptable in that state.

Do I Have To Specifically List All Of My Property In My Living Trust?

No. Adding your trust name on your property titles and beneficiary designations automatically includes them in your trust. It is not necessary to list your property in the trust document itself.



What About Personal Property That Doesn't Have A Formal Title?

A properly prepared living trust will automatically assign all of your personal property, such as furniture, clothes, jewelry, and personal effects, to your trust.

Who Keeps A Record Of The Property In The Living Trust?

You do, and you don't have to tell your attorney or anyone else that you're buying and selling trust property. Just make sure any property you acquire is correctly titled in the trust name.

What Happens To Property That I Forget To Re-title To My Trust?

Property not correctly titled in your trust name is not protected and could be probated. Your pour-over will "catches" any forgotten asset and "pours" it into your trust, but only after it has been probated!

Does A Living Trust Affect My Social Security Benefits?

No.

Will My Living Trust Protect My Estate From Nursing Home Costs If I, Or My Spouse, Suffer A Catastrophic Illness?

No. The property in the trust name still belongs to you, because you own the trust. You are still responsible for your debts and obligations.

Will A Living Trust Protect My Property From Creditors?

No. Your trust property is still subject to your debts and obligations.

Do I Have To Have A Separate Tax I.D. Number And File A Separate Income Tax Return For My Living Trust?

No. A revocable living trust (which can be changed or cancelled at any time) does not require a separate tax I.D. number or the filing of a separate income tax return so long as at least one of the trust grantors is also acting as trustee. You will continue using your social security number and filing your individual income tax returns.

Does A Living Trust Affect My Income Taxes?

No, a living trust has no affect on the amount of income taxes you must pay.



Can A Living Trust Be Used To Reduce Or Eliminate Estate Taxes?

Yes. Married persons can use a tax planning trust to reduce or eliminate estate taxes (also called "death taxes" because they are paid after you die).

How Much Can I Have Before I Am Subject To The Federal Estate Tax?

If your estate's net value (the value of all of your assets minus your debts) is more than \$2,000,000 when you die, federal estate taxes must be paid from your estate. Remember, estate taxes have nothing to do with probate costs, which can affect any size estate.

I'm A Single Person. Can I Use A Tax Planning Living Trust To Reduce Or Eliminate My Estate Taxes?

No. Only married persons can use a tax planning living trust.

Can I Have More Than One Living Trust At The Same Time?

Yes. For example, a husband could set up his own trust for his separate property from before his marriage. He and his wife could also set up a joint living trust to hold their marital property.

Is The Living Trust Legal In All 50 States?

Yes.

What If I Move To Another State?

Although living trusts are recognized in all 50 states, specific state laws (such as community property) may affect your trust. Take your documents to a living trust attorney in the state where you have moved, and have him or her "spot check" your trust documents to ensure that they conform to that state's laws.

For the most part, states follow the same general rules. If something does need to be changed, you don't need to pay another attorney to "reinvent the wheel" by setting up a new trust. Change only the provisions that need to be changed under the laws of that state.

My Spouse And I Have A Joint Living Trust. What Happens When One Of Us Dies?

The surviving spouse is now the owner and acting trustee and has complete control of the trust. Generally the deceased spouse's name is removed from bank accounts and investments and the surviving spouse's social security number is used for tax identification. The trust document does not have to be changed.



Can I Set Up A Living Trust Without A Bank Being Involved?

Yes.

If Something Happens To Me, Who Has Control?

In the case of married persons (who are usually co-trustees), either spouse can act in case the other becomes incapacitated or dies. If something happens to both of you, or if you are single, then your back-up trustee will take over for you.

Can My Living Trust Be Changed Or Revoked By My Back-up Trustees Or My Beneficiaries?

No. Only you as the creator/owner of your trust have the right to change or revoke it.

How Do I Know My Back-Up Trustee Will Follow My Trust Instructions?

Back-up trustees have a strict legal duty (under trust law) to follow your trust instructions. If they fail to do so, they can be replaced as trustee and held personally liable if they act irresponsibly. Properly prepared trusts will provide additional protections for monitoring your back-ups, such as requiring that the acting back-up give every other back-up trustee regular reports on all financial transactions.

How Old Does A Person Have To Be To Set Up A Living Trust Or Act As A Back-up Trustee?

Eighteen years in most states.

Do My Back-Up Trustees Have To Live In The Same State That I Do?

No. Most state laws provide that a back-up trustee may live anywhere. Select your back-ups on the basis of trustworthiness and character, not geographical location; although a local back-up trustee makes trust administration more efficient.

Can I Have Co-Back-Up Trustees?

Yes.

Is A Trustee Entitled To Be Paid?

Yes. A corporate trustee will charge a fee when it begins to act. Individual trustees are allowed reasonable compensation plus reimbursement for out-of-pocket expenses but, if you wish, you can direct that no compensation be paid or limit it to a specific amount.



Do I Have To Pay Annual Maintenance Fees For My Living Trust?

No. But if you have name a corporate trustee, it will charge a fee when it begins acting as trustee.

Is My Back-Up Trustee Personally Responsible To My Creditors?

No. A back-up trustee's personal assets are not subject to creditor claims against the trust.

Who Decides If I Am Incapacitated Enough For My Back-Up Trustee To Take Over?

You do. A properly prepared trust will specify a procedure for your physicians to examine you and verify your ability to handle your business affairs. Your trust should also permit you to pre-select your choice of physicians on a separate list signed by you, notarized and attached to your trust. This prevents "physician shopping" by unscrupulous relatives.

Can My Living Trust Leave All Or Part Of My Estate To An Unborn Child Or Grandchild?

Yes. Your trust can be set up to leave property to an individual who has not yet been conceived. For example, it is quite common to leave a specific amount or percentage of your estate to your grandchildren. At the time you set up your trust you may have only one grandchild, but over the years you may have additional grandchildren. Your trust can be written so it automatically includes the additional grandchildren without having to change the trust document.

If My Child Dies Before Me, Does His Or Her Spouse Inherit My Child's Share Of The Estate?

No. In-laws do not inherit directly from your estate unless you specifically provide for them. Most people want to distribute their assets to individuals who are related to them by blood or adoption.

What Happens If One Of Our Living Trust Beneficiaries Dies Before We Do?

Your trust should provide for that contingency by indicating how the deceased beneficiary's share is to be distributed.

Can I Use A Living Trust To Protect My Special Needs Child?

Yes. A trust to protect a special needs child can be included within your living trust. This allows the disabled child to remain eligible for governmental benefits. The child's trust fund is used only to supplement governmental benefits, not to replace them.



Can I Use A Living Trust To Disinherit My Children?

Yes.

Can I Provide For My Pets In My Living Trust?

Yes. A living trust can include special provisions so that your beloved pets will receive care after your death.

Can I Make A Gift To Charity With My Living Trust?

Yes.

Can A Living Trust Be Contested?

Yes. However, this is a more difficult process than contesting a will. Unlike a will contest, there is no open file in court. The person contesting the trust has to pay to file a lawsuit and prove they have a right to make a claim. By comparison, many will contests are "settled" (the contesters are "bought off") just to end the lawsuit so the estate can be closed and the rightful heirs can receive what is left of their inheritance.

If I Get Divorced, What Happens To My Living Trust?

Your trust document should contain provisions to cover this situation. For instance, one spouse may retain the living trust for his or her, now separate, property. The other spouse's interest in the trust is revoked and his or her property removed. The other spouse will then need to set up a new living trust for the property the divorce court has awarded to him or her.



What Happens To My Living Trust If I Marry or Remarry?

That depends on you. If you want to prevent your spouse or his or her family from acquiring any rights to your property, then you will retain your trust to keep your separate property outside the marriage and under the control of your estate plan. You also need a pre-nuptial agreement to insure that your property remains separate under the laws of marriage.

On the other hand, you may wish to include your spouse, which means you would amend your trust to add your spouse as a co-owner and co-trustee and include his or her property in the trust.

Do I Have To Change My Living Trust If My Daughter Remarries Or Divorces and Changes Her Name?

No. A properly prepared trust will identify all of your children (existing and after-born) as your children. They are still your children regardless of what name they use in the future, so no changes are necessary.

Do I Include Instructions For My Funeral and Burial, Medical Care, or Organ Donations, In My Living Trust?

No. Since this information will be needed immediately if something happens to you, we suggest that your funeral and burial instructions be in a separate letter. Instructions regarding medical care decisions and organ donation should be included in a health care directive (living will). Provide copies of the letter and health care directive to family members and back-up trustees. This insures that they know what your wishes are. You can change your special funeral and burial instructions at any time without having to change your living trust document.

Is A Lawyer Needed To "Settle" My Living Trust When I Die?

No. The law of trusts gives your back-up trustee the legal authority to settle your trust. If you have a tax planning trust, you should use a CPA or a tax attorney to assist with dividing the property and filing the appropriate estate tax returns following the death of each spouse.

How Long Can My Living Trust Continue After My Death?

That's up to you. Most living trusts terminate as soon as the bills and taxes are paid, and the assets are distributed to the beneficiaries. Some trusts last much longer. In most states a trust created for private purposes (to benefit family members, etc.) can continue for approximately 100 years after you die. Trusts set up for charitable purposes (as defined by the IRS) can continue indefinitely after your death.



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When Does My Living Trust End?

Once the property is distributed to the beneficiaries the trust ends.

Can Congress Take Away The Living Trust?

No. The United States Constitution reserves certain powers to the states, one of which is the right to create a "legal entity" such as a trust. Congress has no legal authority to take away living trusts.

Is There Anything Bad About A Living Trust?

No. There are no legal disadvantages to a living trust. It is a very traditional, well-proven estate-planning tool that has been used successfully for centuries.

Any problems that people have with a properly prepared living trust rarely have anything to do with the trust document itself. The problems usually occur when property is left out of the trust because titles and beneficiary designations were not properly changed to the name of the trust. People sometimes forget something or their attorney may not tell them about the need to re-title their property. Sometimes they simply procrastinate. The trust still works, but any property left out of it is at risk of being probated. If you want to completely avoid probate, then all of your property and beneficiary designations must be correctly titled in your trust name. It doesn't take that much time to change the titles and beneficiary designations, and once it's done your living trust is easy to maintain.