



## Living Trusts

### What is a living trust?

A living trust is one way to manage your property. You get the full benefits while you are alive, and your “successor trustee” can manage your property for you if you become incapacitated. If properly funded, a living trust also lets you pass your property to your loved ones (or charities) after your death without having to go to probate.

A living trust is set up during your life. Certain property is transferred into the trust while you are still living. After you die, the property can be transferred to your beneficiaries without probate.



Remember, a living trust only covers the property put into it. A “pour-over will” should always go along with a living trust. A pour-over will is a legal document that makes sure your remaining assets **automatically** transfer to a trust you set up. If the pour-over will is invoked, you may still need probate.

### There are 2 kinds of Living Trusts

- An irrevocable trust **cannot** be changed or ended after it is signed.
- A revocable trust can be changed or ended at any time, as long as you are still competent.

### What should I do before setting up a living trust?

**It is always best to talk to a lawyer** who can help you decide if a living trust is right for you. If you decide to set up a living trust, the lawyer can draw up the papers to make sure it fits your needs. Then the lawyer can help you put the property in the trust. A one-size-fits-all trust form may not help you.

### What about buying a living trust package?

Beware of anyone who pressures you to buy a living trust package. Do not deal with anyone who wants you to sign something right away or to pay money before you have a chance to do more research. Some companies only want to sell their pre-packaged plans. They don’t care how well the plan meets your needs. **If a do-it-yourself trust is not done right, it can cause problems that cost money to fix.**

Even though it is possible to make a basic living trust on your own **it is very hard without the help of a lawyer.** A lawyer looks at your situation and can explain things to you. If you don't have a lot of assets and you are not trying to limit access to money that you are leaving someone, a trust may not make sense for you.

### **So how does it work?**

Basically, you make or set up a trust by signing a trust agreement. The agreement must be signed by:

- the person whose money and property will be managed by the trust (the Settlor - you) and
- the person who will be managing the trust (the Trustee).



The trustee must follow the directions you put in the trust papers. The trustee also has to follow laws about administering the trust and managing property.

Then you transfer ownership and control of your property to the *trust*. The people who get the benefits now and the people who get your property after you die are called *beneficiaries*. You are typically the beneficiary while you are alive.

Some people want a living trust as a way to avoid probate. Be careful! Trusts can be confusing and expensive. Think about it carefully and get legal advice. There are often easier ways to avoid probate.

### **More about settlors, trustees, and beneficiaries**

In a typical living trust, you would be the settlor, the trustee, and a beneficiary. This just means that it is your property, and you manage it while you are alive. When you die, the property is given out to the other beneficiaries that you named in the trust.

**Note:** You do not have to be the trustee. The trustee can be another person or a financial company, like a bank. You should appoint a successor trustee (an alternate) to take over when you can't manage the trust anymore and when you die. If you don't appoint someone to take over, then a court gets involved. That is expensive and may not be what you want!

## Can a living trust avoid probate?

Yes. This is one great benefit of a living trust. After your death, the trustee or successor trustee, can give out the property in the trust to the beneficiaries without going to court. This avoids the cost and delay of probate. Also, using a trust is a private process, not like probate where your will is a public document. See our fact sheet, [Questions About Probate](#).

## Are there other ways to avoid probate?

Yes. Here are some examples:

- If 2 people own property together in **joint tenancy**, there is usually no probate for that property. When one dies, the property automatically belongs to the survivor.
- There is no need to probate **assets that name a beneficiary**. For example, life insurance money goes automatically to the named beneficiary without probate. So does a bank account and retirement accounts if a beneficiary is named.
- You can use a **Transfer on Death Deed** instead of probate to give your house to someone when you die. See our fact sheet, [Transfer on Death Deeds](#).



## Can a trust help if I become unable to manage my property?

If the living trust is set up while you are competent, the trustee (or the successor trustee) manages the trust property for you if you become incompetent. The property must be managed for your benefit as long as you are alive.

**IMPORTANT:** If you have property that is not put into the trust, you need to have a power of attorney for that to be managed during your life. For example, an IRA should not be put in your trust. An IRA always has to stay in your name. See our fact sheet [Powers of Attorney](#).

## Which costs more, a living trust or a will?

If you are paying for someone to help you it generally costs more to set up a living trust than to write up a will.

- Because a living trust is more complicated it costs more to have a lawyer write it up than it does to have them write up a will.

- A living trust only works if you transfer property to it. You may need a lawyer to handle the transfers, especially if you transfer real estate.
- If the trustee is a financial company, it charges fees to manage the trust.

If you can't avoid probate and have a lot of assets, it may be cheaper to have a trust than a will. This is because a will often has to go through the probate process.

**The real question to answer is:** What costs more in your situation, a living trust OR to probate your estate? This depends on your specific situation, so it makes sense to talk to a lawyer about it.

See our fact sheet, [Common Questions About Wills](#).

### **Is a living trust a good idea if I don't have real estate or many financial assets?**

Probably not. This is because financial assets can be managed during your life by using a power of attorney. And they can be given to who you want after your death by naming a beneficiary on your financial accounts and your real estate.

But sometimes, there may be a good reason you want money managed in a trust. A good example is if you have many people you want to give your property to at your death. You may not be able to do this with a transfer on death deed or a beneficiary designation on your bank account.

### **Does a living trust protect my assets if I go into a nursing home or if I need home care?**

Generally, no. If you apply for Medical Assistance (MA) to pay for long-term care, the state treats your assets in the trust as available assets. This means they are assets you could use to pay for your care. You would have to use these assets up to be eligible for benefits like MA. These possible problems are another reason to talk to a lawyer to see if a trust makes sense for you.



**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

© 2024 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies.  
Reproduction, distribution, and use for commercial purposes are strictly prohibited.