

LIVING TRUST

What is a Living Trust

A living trust, as know as revocable living trust or inter vivos trust, it is a type of trust created for the purpose of holding ownership to an individual's assets during the person's lifetime and for distributing those assets after death.

A living trust allows you to gather together in one document all your significant property. This is important if you want to make sure that your property is distributed easily and quickly after your death. The trust, not you, owns that property. This doesn't mean that you no longer have control of your assets. Since you, the grantor, will usually appoint yourself as the trust's initial trustee, you still have complete control of your property. You can do what you want with that property - you can even transfer some property out of the trust or add property to it. Most importantly, a living trust allows you to provide for the quick and efficient distribution of your property to loved ones when you die.

In the United States it is often used because it may allow assets to be passed to heirs without going through probate. Avoiding probate may save some costs (the probate process can charge a fee based on the net worth of the deceased), time, and maintain privacy (the probate process is public, while distribution through a trust is not). Living trusts also can be used in planning for the contingency of incapacity. The Grantor may be a trustee or co-trustee, with the trust instrument providing that either trustee alone may act on behalf of the trust. The trust instrument may also provide that other the co-trustee shall act as sole trustee if the Grantor becomes incompetent. Despite the advantages, there are also some negative aspects to think about when considering a living trust. Beneficiaries do not save on estate or state inheritance taxes. Also, they are expensive to set up, and the expense is immediate, not after the grantor's death.

A common misunderstanding regarding living trusts is that they shelter assets from having to pay the estate tax. This is not correct. However, a married couple having a living trust can effectively double the estate tax exemption amount (the amount of net worth above which an estate tax is levied) by setting up the trust in a certain way.

Establishing a Living Trust

An individual transfers title of his/her assets from himself/herself as grantor, to himself/herself as trustee of the trust, to administer for the benefit of himself/herself. The trust also must name the remainder beneficiaries who will take after the grantor dies. The beneficiaries get nothing until that person dies.

A corporation can also be trustee such as a bank. A substantial advantage is that a corporate trustee can act in perpetuity, whereas an individual cannot. Furthermore, corporate trustees must provide accurate and detailed records of all transactions that take place in the trust, for however long the trust exists.

Grantor: the person who sets up the trust; also called the settlor, trustor, or trustmaker.

Trustee: this is the person who will manage the trust assets. This also may be the settlor in a Revocable Living Trust, since the settlor wants to manage his or her own property. Revocable Living Trust may also be called a "self settled trust."

Successor Trustee: this is the person who will manage the trust assets when the Grantor dies or if he/she becomes incapacitated. Upon the Grantor's death, the Successor Trustee will immediately have the same powers that the Grantor had to buy, sell, borrow, or transfer the assets inside the trust. Also, the Successor Trustee has the right to distribute the trust's assets according to the Grantor's instructions in the trust instrument. The Successor Trustee does not have the legal right to change the trust. The trust becomes irrevocable upon the Grantor's death. However, the Successor Trustee has the right to manage the assets in the estate, but must do so

for the benefit of the remainder beneficiaries. At the Grantor's death, the Successor Trustee automatically takes over, without court order pays any debts, expenses and taxes that are directed to be paid and then distributes the property to the trust beneficiaries. Where the trust is to end on the Grantor's death, and the trust is merely a means of avoiding probate, the beneficiary should ordinarily be named Successor Trustee.

Beneficiaries: the people who will receive the benefit of the trust's assets are called beneficiaries. The grantor is the original beneficiary. Those who take after the grantor's death are "remainder beneficiaries."