

Living Trusts

What is a Living Trust?

A living trust is a legal document created during your lifetime that allows a trustee to hold and manage your assets for your benefit while you are alive and then distribute those assets to your chosen beneficiaries after your death without going through probate court.

There are three main positions designated in a living trust:

- **Grantor (or Settlor)**. The person who creates the trust and transfers their property into the trust, e.g. home, bank accounts, investments, and personal property.
- **Trustee**. The person who manages the assets inside the trust according to its written rules. For a typical living trust, you name yourself as the primary trustee so you retain full control over the trust assets while you are alive. A successor trustee is also named in the event of incapacitation or death.
- **Beneficiary(s)**. The person or people who receive the benefits of the trust. While you are alive, you are the primary beneficiary. After you die, the people you name to inherit the assets are successor beneficiaries.

Once the living trust is created, it must be signed, witnessed and notarized to become a valid legal document. Then the critical step of funding the living trust must be completed. Your assets do not automatically transfer into the trust; they must be retitled in the name of the trust. Any assets not transferred to the living trust prior to your death must go through probate when you die.

Why Set Up a Living Trust if I Already Have a Will?

Living trusts are attractive because they avoid the time and cost of probate, maintain privacy, determine how assets are managed in the event of incapacitation as well as dictating exactly how they will be distributed upon death. Living trusts are especially attractive to:

- **Property Owners.** It is advantageous to have property transfer immediately without probate so the beneficiaries can have access to use it or sell it. It is even more attractive for owners of out-of-state property since you otherwise need to go through a separate probate process in every single state in which you own land. All property held in trust escapes probate.
- **People Who Prioritize Privacy.** When a will is probated, it becomes a public record. Anyone, including nosy neighbors, scam artists, or estranged relatives can look up what you owned and who got it. A trust is a private contract that never goes to court keeping your financial affairs strictly confidential.
- **People Who Prioritize Speed.** Probate can freeze access to your accounts for months. A trust gives your successor trustee immediate access to funds to pay for your funeral, mortgage, and daily bills within days of your death.
- **People Worried About Future Illness or Incapacitation.** A will only goes into effect when you die. A living trust protects you while you are alive. If you develop dementia, suffer a stroke, or are otherwise unable to manage your financial affairs, your hand-picked successor trustee can instantly step-in to pay your bills and manage your assets without your family having to fight for a court-ordered guardianship.

Differences Between Wills and Living Trusts

Differentiating Factor	Wills	Living Trusts
When it Takes Effect	After death	Immediately upon creation
Court Involvement	Requires probate court	Bypasses probate court completely
Privacy	Becomes part of public record	Remains strictly private
Costs	Lower upfront cost, but increased probate administrative costs	Higher set-up cost but avoids probate administrative costs
Time Until Post Death Distributions	Only after completing probate process, which may be months	Almost immediately after final expenses, debts, and taxes paid
Asset Management	Does not manage assets if you are ill or incapacitated	Can manage assets if you become ill or incapacitated
Guardianship	Can name guardians for minor children	Cannot name guardians for minor children