

FREQUENTLY ASKED QUESTIONS ABOUT LIVING TRUSTS

1. What is a revocable living trust?

Answer: A revocable living trust is a contract. With this contract, you establish a separate entity, the trust, which will own your assets. You retain control of those assets and have the right to change it, amend it or revoke it at any time.

2. Is the living trust a new idea?

Answer: Traditionally, they have been used only for people with very large estates. Now, estate planners recognize that individuals, with modest estates also benefit from Living Trusts.

3. How does a living trust help me to avoid probate?

Answer: Once you have created your living trust, you can avoid probate on all of the assets that you transfer into the trust. By transferring your assets into the trust, your assets are then owned by the trust and upon your death, the trust operates to provide for the distribution of those assets to your beneficiaries pursuant to your instructions.

4. Is the living trust valid in all fifty states?

Answer: Yes, living trusts are recognized in each of the fifty states and many foreign countries as well.

5. Why doesn't everyone have a living trust?

Answer: Living trusts are becoming increasingly popular. In some states they have substantially replaced wills as a significant means of handling ones estate.

6. How are a will and trust different?

Answer: A will guarantees probate. It must be admitted into court and approved by a judge before assets can be transferred. A living trust avoids probate and provides for a quick and inexpensive transfer of assets upon death.

7. Does a living trust make sense for a single person?

Answer: Yes. A living trust avoids probate and guardianship and provides for a quick private transfer of your assets to your beneficiaries.

8. Is a living trust known by any other names?

Answer: Yes, they are also known as revocable trusts, intervivos trusts, grantor's trusts, and "loving" trusts. Although there may be some variation from one trust to the next, they are essentially the same.

9. What is an irrevocable trust?

Answer: An irrevocable trust is a trust where you do not retain the right to amend or revoke it. Once it is created, it is permanent and cannot be changed. Living trusts are not irrevocable.

10. Should my children read my living trust?

Answer: Many people show their living trust to their children and consult with them. It is up to you. We strongly recommend that you specifically inform your children that you do have a living trust.

11. Will a living trust affect my social security benefits?

Answer: No. Social Security benefits are totally unaffected by a living trust.

12. Where should I keep my living trust?

Answer: Your living trust is a valuable document. You should store it in a safe place. Access to a safe-deposit box can be limited upon your death. A fire box would be a good place. If you lose it, we keep a copy on file and we will provide you with a replacement for a nominal fee. Let your successor trustee know where your trust can be found.

13. Who are the parties to the trust?

Answer: The parties to a trust are, the settlor(s), which is(are) the person(s) who creates the trust, the trustee(s), which is(are) the person(s) who manages the trust, and the beneficiaries, whom

benefit from the trust income and assets. In living trusts created by us, the settlor(s), the trustee(s) and initial beneficiaries are always the same unless you specifically request otherwise.

14. What are the rights of the surviving spouse as trustee?

Answer: The surviving spouse retains full rights to all of the trust assets and continues to have the ability to amend or revoke the trust. The only exception is if an AB trust has been created. Further information about the AB trust is found below.

15. How is the successor trustee forced to abide by the wishes of the creators of the living trust?

Answer: A successor trustee has a fiduciary obligation to follow the instructions provided in the living trust. The beneficiaries named in the trust have the right to take the trustee to court if the trustee fails to abide by those instructions.

16. Can my successor trustee make changes to my living trust?

Answer: Once both of the individuals who created the trust have passed away, no changes are permitted in the trust.

17. Does a bank or trust company have to be involved?

Answer: No. If you choose, you can name a bank or trust company to be trustee of your trust and to manage your financial affairs. Most people choose to use individual trustees. The person who creates the trust is, almost always, named as first trustee. They then designate successor trustees to handle their affairs if they become disabled or die.

18. If I set up a trust, is a will also required?

Answer: A will is not required, but is highly recommended. We prepare a pour over will as part of every trust package. The purpose of the pour over will is to capture any assets inadvertently omitted from the living trust and transfer them into the trust. However, the use of the will to capture such assets requires a probate proceeding.

19. What is a Pour Over Will?

Answer: Since it is sometimes impossible to include everything you own in your trust by deed, account or name, you will find included in this package, a simple "Pour Over Will." Unlike the normal Last Will and Testament that you may be used to, the Pour Over Will simply directs your named Executor to 'pour over' any asset which you failed to include in your trust, into your trust, for distribution under the terms of your living trust. Hopefully, we will have already transferred all major assets into the living trust so that no probate is necessary to transfer the remaining assets into the living trust through the Pour Over Will. You may wish to think of the Pour Over Will as a safeguard for any assets inadvertently left out of your trust.

20. Does my will avoid probate?

Answer: No. Living trusts avoid probate, wills do not.

21. What does a power of attorney accomplish?

Answer: When you create a living trust, a legal entity is established for the maintenance and care of your assets and estate. In the event that you leave the country or become incapacitated, the Power of Attorney allows you to designate an individual to act on your behalf in managing your affairs, usually on a temporary basis. In the extreme example, a Power of Attorney will enable your designee to transfer for you, many of the remaining assets that, because of an incapacity you could not transfer to your trust yourself.

22. What does a Durable Power of Attorney for health care decisions mean?

Answer: We also provide a Durable Power of Attorney for health care in your trust package. This allows a person of your choice to make medical decisions in the event you are physically unable to make decisions or give consent to treatment yourself. The Durable Power of Attorney for health care also allows your designated agent to withhold medical treatment in certain circumstances.

23. What is the difference between a funded and unfunded trust?

Answer: Having received your living trust documents, your living trust will not take effect until you execute it by signing all of the necessary papers and obtaining witness signatures and a notary. However, even then your trust will remain "unfunded" until you transfer your assets into

it. Transferring your assets into your trust is quite simple. For example, with a deed, you can transfer your real property from your current ownership to your trust. The law does not consider such a transfer to be a sale for the purposes of reassessing your property for tax purposes. In addition, you may contact your bank or other institution where you hold assets to rename your assets and accounts as belonging to your trust. We will assist you in this regard. After your assets are transferred to your trust, your trust is considered “funded”.

24. Must I transfer all of my assets into the trust?

Answer: Not every asset must be transferred. However, it is very important that all of your significant assets be transferred into the trust. If you leave a very small amount of property out of the trust, there will be no probate needed to divide that property up among your beneficiaries. However, if you leave any significant assets outside of the trust, probate will be required in order to transfer those assets to your beneficiaries.

25. What happens to assets that are outside my living trust? Since they pour over in the trust, must they go through probate?

Answer: Assets left outside the trust are captured by the pour over will and transferred into the trust. However, these assets must go through probate and there are additional expenses incurred as a result.

26. Is there anything that I should not put into the living trust?

Answer: Yes. You should not put your IRAs or Keogh plans or other assets that may become disqualified for tax advantaged treatment. Also, if you intend to transfer “Sub-S” stock into the trust, you should first consult us.

27. Is it necessary to put personal property into the trust?

Answer: Yes. It is easy to make a transfer of all of your personal property into the trust at the time you create the trust. Your trustee would then have total authority to distribute that personal property to your beneficiaries according to your instructions.

28. Can I transfer my assets from my living trust?

Answer: The assets in your living trust are totally accessible by you. You can spend them, give them away, transfer them into your own name or to other individuals, all without any restriction.

29. What should be inside my living trust?

Answer: To receive the full benefit of your living trust, every asset should be placed into your living trust with a few minor exceptions. Also, IRA accounts must be owned by an individual and should not be changed over to the trust, however, the death beneficiary should be changed so the spouse is primary and the trust is secondary death beneficiary. Lastly, life insurance policies do not need to have the ownership changed, but the death beneficiary should be changed to the trust.

30. Should my life insurance policies be placed inside the living trust?

Answer: No. However, your living trust should be the beneficiary of your life insurance policies. By naming your living trust as the beneficiary of your life insurance policies, you are able to consolidate all of your wishes into one comprehensive plan.

31. Should I put IRAs and Keoghs inside the living trust?

Answer: No. IRA and Keogh accounts must be owned by the individual. However, the death beneficiary should be changed so the spouse is primary and the trust is secondary death beneficiary. The living trust should not be the owner of your IRAs and Keoghs, as this disqualifies them from their tax-favored status.

32. How are assets acquired after my living trust is created?

Answer: They are acquired just as easily as before you created your living trust. However, you should use your name as trustee of your living trust on all acquisitions. For example, Mary Smith, Trustee, Smith Family Trust.

33. Do I need to change ownership of my stocks and bonds?

Answer: Yes. Ownership of your stocks and bonds should be changed into the name of your trust in order to avoid probate.

34. Should I transfer my mortgage into the living trust?

Answer: No. It is not necessary. Your liabilities follow your assets. You transfer your assets into the trust. However, it is not necessary to transfer your liabilities into the trust.

35. If I place my home in the living trust, will it affect my mortgage? Can the mortgage company “call” my mortgage?

Answer: No. Transferring your home into the living trust will have no effect on your mortgage.

36. Do I have to value my assets as they go into the living trust?

Answer: No. There is no reason to value your assets as you place them into your living trust. It is helpful, however, for you to have an understanding of the value of your assets so that you can properly plan strategies to reduce estate taxes.

37. Do I put recreational vehicles and boats into the living trust?

Answer: Yes. It is essential that these items go into the living trust in order to avoid probate.

38. Is it costly to transfer assets into the living trust?

Answer: We will either transfer, or assist you to transfer, your assets into the trust. This service is part of the fee you pay to us to prepare the trust.

39. Must special income tax returns be filed?

Answer: No, special trust tax returns are not filed for a revocable “living” trust. However, upon the death of a spouse, one-half of an AB trust becomes irrevocable and the surviving spouse must then file a trust tax return. When a trust becomes irrevocable, then a trust tax return is required. If you are single, your living trust becomes irrevocable upon your death. If you are married, your living trust becomes irrevocable upon the death of husband and wife. Again, if assets are retained in the trust, then a trust tax return would be filed each year.

40. Will a living trust reduce estate taxes?

Answer: A living trust may reduce estate taxes depending upon the size of your estate. An estate under \$600,000 can be passed to your heirs without any federal estate tax being payable. Each individual has a \$600,000 federal estate tax equivalent exemption. If you have an AB trust (the B trust being a bypass trust), then you preserve the federal estate tax equivalent exemptions of both spouses and an estate valued up to \$1.2 million can be passed to your heirs before any federal estate taxes must be paid.

41. Does a trust make sense for an estate of less than \$600,000?

Answer: Yes, the \$600,000 amount has nothing to do with probate. The federal estate tax equivalent exemption is \$600,000. This means that your estate, if valued at less than \$600,000 will not be subject to federal estate tax. However, in most instances, smaller estates are still required to go through probate unless the estate is held in living trust.

42. Will a living trust change my income taxes?

Answer: No. A living trust does not affect your income taxes. You continue to file your income tax return as you have in the past.

43. Is the cost of a living trust tax deductible?

Answer: This is a difficult question that is best answered by your individual accountant. Expenses for estate tax planning purposes are tax deductible. A portion of your purchase price for our trust package may qualify as an expense for estate planning.

44. If I put my home in a living trust, can I still deduct my mortgage interest?

Answer: Yes. A revocable trust has no impact on your income taxes.

45. Do I place rental properties in my living trust, and, if so, how is the rent treated?

Answer: Yes. It is important that you transfer your assets into the living trust including your rental properties. The rental income is recorded on your tax return just as you have done before. Depreciation expenses on your rental real estate will also be handled in the same manner as you did prior to creating your living trust.

46. Will I lose my \$125,000 exemption of my home if it is in a revocable living trust?

Answer: No. The \$125,000, once-in-a-lifetime exemption is preserved even if your home is in a revocable living trust. However, if you have an AB trust and a spouse dies and you are planning to utilize this \$125,000, once-in-a-lifetime exemption, then you should retain the house in the survivors A trust which remains revocable rather than putting it in the irrevocable decedent's B trust.

47. Are the assets in my living trust available to pay for nursing home care?

Answer: Since the trust is totally revocable, assets in the trust are available to pay for nursing home expenses. Some people mistakenly believe that if they transfer their assets into the living trust and then enter a nursing home and apply for medical assistance, that the assets in the living trust are protected. This is definitely not the case. Medical assistance rules are complex. However, we will be happy to consult with you on an individual basis with respect to additional options, which are available to you to protect your assets from Medicare.

48. How is distribution upon death different if I have a living trust rather than a will?

Answer: When your assets are not in a living trust, they are distributed according to your will through the probate process. Once probate is completed, your assets must be immediately distributed outright. When you have a living trust, the successor trustee steps in and has immediate power to distribute the assets as set out in your living trust. However, with a living trust, the assets may remain in the trust to be distributed later if the trust so provides, since the trust is a legal entity and "lives on" after the persons' death.

49. How should you name assets that are transferred into the trust, or acquired by the living trust?

Answer: Title to property in your living trust should be set out as follows: "John Doe, Trustee of the John Doe Trust Agreement dated 1/1/1990." It is sometimes also acceptable to use a shorter style; for example, John Doe, Trustee. We will be happy to provide individual assistance in this regard.

50. Is it difficult to change my living trust, and when would I want to make a change to my living trust?

Answer: It is very simple to amend your living trust. Typically there are two types of changes that you might want to make to your living trust. One would involve making a change to your plan, such as a change of beneficiary or a change of successor trustee. Sample amendment clauses are contained in the back of your trust package for your aid in making such amendments. You can also make changes by crossing out and changing any item and then having both Settlor(s) (i.e. creators) initial the same. The second type of change would involve amending your trust to keep current with the state tax laws, either because of a change in the laws or because of a significant change in your assets. If a change would benefit your estate, you may want to incorporate that change into your trust. In those instances, you should contact us.

51. Can I revoke my living trust?

Answer: Yes. The creators of a living trust reserve the right to revoke it at any time.

52. Can I sell my assets once they are in a living trust?

Answer: Yes you can. You have the same control over your assets, including the right to buy, sell or transfer those assets as you did before they were placed into the trust.

53. Can a living trust be contested in the same manner as a will?

Answer: No, but there is a procedure for petitioning the Court to intervene in situations where a trustee is improperly handling the trust. Our trust has a provision that disinherits any beneficiary who attacks the trust.

54. If my child dies before me, does his or her spouse become a beneficiary of that child's share of the estate?

Answer: Typically, the wording in the living trust provides that the deceased child's share of the estate passes on to the children of that child. If the deceased child has no children, then the deceased child's share of the estate would be re-divided among the other remaining children. However, your assets do not have to be distributed that way. You may leave all or part of your child's share to your child's spouse. The language contained in your living trust will control the distribution. We will discuss this further with you should you so desire.

55. Can I make a gift to charity through my living trust?

Answer: Yes. Your living trust contains forms to amend the trust agreement. You can simply list the asset and the charity to receive the asset on the amendment and execute the amendment and your wishes will be carried out. However, for tax reasons during the life of the Settlor, gifts should not be made directly to the charity but instead should be made by the settlor directly.

56. Do I ever need to update my living trust?

Answer: You should periodically review your trust to see if there are any changes by way of amendment that you would like to make.

57. How does the living trust dissolve, and is there any probate at that time?

Answer: A living trust is effectively dissolved once all of the assets in the trust have been distributed to your heirs in accordance with your wishes. There would be no probate if all of the assets had been in the living trust.

58. Do I need to liquidate the living trust assets in order to distribute the assets?

Answer: No. Liquidation of the living trust assets is not required. The assets may be distributed directly to the heirs without converting them into cash.

60. Does the living trust protect me against creditors?

Answer: No. A living trust is fully revocable during your lifetime and does not protect you from your credit obligations.

61. Will my living trust protect me from lawsuits?

Answer: No.

62. Will my disability affect my living trust?

Answer: If you become disabled, your job as trustee will be transferred to your successor trustee. You are considered disabled if two licensed physicians state in a letter that you are incapable of handling your financial affairs. When you again become capable of handling your affairs you can resume your duties as a trustee.

63. Do I need to notify my attorney that I replaced my will?

Answer: There is no need to notify your attorney. When you execute your pour over will, you revoke any former wills or codicils.

64. Where do I register my living trust document?

Answer: Living trust documents are private documents and do not need to be registered or filed. Real property that is titled in the name of the trust, upon being sold, will require a deed signed by the trustee of the trust. At that time, a portion of the trust should be recorded to show that the trustee of the trust has the power to sell the real property.

65. Can a living trust continue on, generation after generation?

Answer: Yes. A living trust can continue on for several generations. However, a living trust must dissolve at some point, which is controlled by what is called the "law of perpetuity". Under the law of perpetuity, the living trust must cease 21 years after the death of the last of the potential heirs living and identifiable upon the death of the trustors.

66. Can I leave all or part of my estate to an as-yet-unconceived child or grandchild?

Answer: Yes. With the living trust, it is possible to leave assets to an individual who has not yet been conceived.

67. What should I do if my spouse or I become very ill and are hospitalized or placed in a long term care facility?

Answer: Medical assistance laws are complex. We will assist you upon your request to assure that you will have the opportunity to do appropriate planning to preserve your assets.

68. Is an AB trust actually two different trusts?

Answer: No. There is one trust which is allocated into the A share, which is also known as the marital share, and the B share which is also known as the bypass trust.

69. What are the beneficial rights of the surviving spouse to the bypass Trust (B Trust)?

Answer: The surviving spouse has the right to all of the income from the bypass trust, plus such portions of the principal as are needed to provide for the surviving spouses health, education, support and maintenance, plus 5% or \$5,000.00 of the principal each year the trust is in operation.

70. What are the rights of the surviving spouse to the assets in trust A?

Answer: The A trust is totally accessible by the surviving spouse.

71. Can probate be avoided by the use of joint tenancy?

Answer: Yes. Joint tenancy property avoids probate upon the death of the first spouse. However, when the second spouse dies, all of the assets and the property must go through probate unless they are contained in a living trust. There can also be serious income tax consequences with the use of joint tenancy as a probate avoidance technique.

72. Is there any problem with transferring assets held in joint tenancy into the living trust?

Answer: No. Transfers of joint tenancy property into the living trust are quite common. Once transferred into the trust, the property is jointly controlled by both spouses as are all of the assets of the living trust.