



The Peninsula Center

for Estate and Lifelong Planning
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Frequently Asked Questions About Revocable (Living) Trusts

Can I act as my own trustee?

Yes. If you are competent to handle your financial affairs now, there's no legal reason why you can't be the trustee of your own trust. In fact, most living trusts have the people who created them acting as their own trustees. If you're married, you and your spouse can act as co-trustees.

What can I do with my assets they're in my Trust?

If you're the trustee, you can do anything you want with the trust assets. After you set up your living trust, you should **once** transfer title to all of your assets from you as an individual to you as the trustee of your trust. You then must manage the trust property for the benefit of yourself as the beneficiary. What this means is that you will have absolute and complete control over all the assets of your trust. If you want, you can spend, save, invest or even give the assets away at your discretion. There are no restrictions on what you can do with the assets in your living trust. Moreover, if you don't like the terms of the trust, you can amend it or revoke it at any time without penalty.

Will my Trust Avoid income taxes?

No. The purpose of creating your Revocable Living Trust is to avoid living probate, death probate, and reduce or eliminate federal estate taxes. It's not a vehicle for reducing income taxes. In fact, if you're the trustee of your living trust, you will file your income tax returns in exactly the same way you filed them before the trust existed. There are no new returns to file and no new liabilities are created.

Can I transfer real estate into my Trust?

Yes. In fact, in most cases, all real estate should be transferred into your trust. Otherwise, upon your death, and depending on how you hold title, there will be a death probate in every state where you own property.

If I transfer real estate into my Trust, will my property taxes go up?

No. Transfers into your living trust have no effect on your property taxes. However, if the property has a "homestead" exemption, your attorney should verify that transfer to the trust will not affect your exemption before actually transferring it to the trust.

If I'm only a part owner of property, can I transfer my share into my Trust?

Yes. Your share can go into the trust without changing the interests owned by others.

Can I name trustees and beneficiaries who live out of state?

Yes. There is no restriction on where your trustees or beneficiaries must reside. Unlike with the executor of a will who has to post a surety bond if he lives outside of Virginia, there is no such requirement for an out-of-state trustee.

Will I have to consult an attorney every time I buy new assets?

No. As part of your trust plan, you will receive instructions to help transfer your current assets to your trust. And, if you take title to all new assets in the name of the trust, they will automatically be owned by your trust.

Does my Trust need to be registered or recorded?

No. Your trust is a private document which is not recorded. However, if you own any interest in real estate, the new deeds showing trust ownership will be recorded.

Can I sell assets owned by my trust without complications?

Yes. You sell assets in the same way you do currently. You will, however, add the word "Trustee" after your signature.

Can I change the terms of my Trust?

Yes. While you're alive and competent, you can alter your trust or even revoke it at any time.

Is my Trust just a tax loophole that the government will close down?

No. Your trust has been authorized by the law for centuries. The government has no interest in making you go through a probate. Those proceedings only clog up the court system. With a married couple, estate tax savings can be achieved through the trust. The current exemption from federal estate taxes is over \$11 million per person, which means fewer Americans are now subject to estate taxes. But the exemption could always be changed at any time. It is impossible to predict if, when, and how Congress may change the exemption amount in light of the federal deficit and other economic factors. But even if the exemption is significantly reduced, your trust can be drafted to provide you with the maximum exemption allowed by law at the time of your death with additional benefits permitted to married couples.

Can I transfer separate property into my Trust?

Yes, married couples can transfer both joint and separate assets into the trust, but they will not be commingled. Separate property retains its character as separate property while in your trust. If your marriage is terminated, all assets come out of your trust in the same way they went in: joint property is divided between the spouses and separate property is returned to the party who originally owned it.

Can any attorney create a Living Trust?

No. The drafting of your living trust should only be done by an attorney who specializes his or her practice in the area of estate and trust law. It's important that you seek out an attorney who has substantial trust experience. Ask the attorney not only how many living trusts he or she has prepared in each of the past several years, but also whether the attorney is of the belief that every

person needs a trust (because this simply isn't true). The attorney should be able to clearly explain to you why your estate would best be handled through a trust-based estate plan than through a will-based estate plan. And, ask if the attorney uses a "canned" estate planning software program. The attorney must possess knowledge which surpasses the documents provided by the program. Your estate plan will ultimately manage and dispose of all your hard-earned wealth. Make certain you choose a lawyer who is both qualified and experienced.

**What if I move another state,
Is my Trust still valid?**

Yes. Your trust is valid in all 50 states, regardless of the state where it was originally created.

Is a Trust only for the rich?

No. A living trust can help anyone who wants to protect his or her family from unnecessary probate, delay and federal estate taxes. In fact, if your total estate is greater than \$100,000, a living trust offers substantial protection for you and your family. Remember that trusts provide many benefits beyond minimizing estate taxes, including asset and remarriage protection for your spouse and beneficiaries.

Is a Trust a good idea for a single person?

Yes. If you are widowed, divorced, or unmarried, a living trust offers protection for your estate as well. It can completely eliminate a living probate and death probate, and enable you to provide asset protection for your beneficiaries. It also more easily enables you to control how your estate is distributed, when, and to whom.

Are there any major disadvantages to a Trust?

No. Because you have complete control of all assets in your trust, you are free to manage your trust in any way you want. Also, because your living trust is revocable, you have the right to make any changes in it while you're alive and competent.

What a Living Trust Can Do For You

A Living Trust Eliminates a “Living Probate” Proceeding

If you become disabled or are unable to manage your estate, your living trust avoids the need for a court mandated conservatorship. The successor trustee you've named will step in and manage your affairs without government interference, delay and expense.

A Living Trust Avoids Death Probate

With a living trust, your assets can go directly to your beneficiaries after your death. There will be no probate taxes or court costs. Your trustee will have immediate access to your assets for the purpose of paying expenses. There will be no delay in distributing your assets, and all your estate planning goals and the provisions of your trust will be kept completely private.

A Living Trust Allows You to Restrict How Your Estate is Managed and Spent Even After Your Death

It can provide for the care, support and education of your children by turning over assets to them at any age you choose. Even insurance proceeds can be paid to the trust so your successor trustee can manage them for the benefit of your family.

A Living Trust Can Protect Assets for Beneficiaries

A living trust is the best way to protect assets for beneficiaries with disabilities, creditor problems, drug or alcohol addictions, divorce issues, minor children and children from prior marriages, and if properly drafted, can avoid loss of government benefits and loss to your child of their inheritance to a spouse, creditor, or by foolish and imprudent use of funds.

A Living Trust Can Ensure That Your Wishes Are Carried Out and Are Not Subject to Attack

Your living trust can contain a “No Contest Clause” which reduces the possibility that disgruntled beneficiaries may attempt to attack your estate plan.

A Living Trust Gives You Peace of Mind

When your living trust is completed, you and your family will relax knowing that your estate will be managed and distributed by someone you have selected and trust, in the manner in which you have directed in the trust document.

This publication is intended for general information purposes only and is not to be construed as providing legal advice. You must consult an attorney to discuss how the laws apply to your specific situation and how to best implement a plan that will meet your individual goals and objectives. If we can be of assistance in that regard, please call us at (757) 969-1900 to schedule a consultation appointment.