Understanding
ESTATE PLANNING & LIVING TRUSTS

How To Avoid Probate,
Save Taxes and More

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Taking the time to read this booklet may well be one of the wisest investments you make for yourself and your family. Our intention in writing it is to give you an accurate introduction and general overview of estate planning and living trusts. While there will probably be some variations in your state's laws and terminology, generally these will only be technical and will not affect the overall message.

Good plans can go wrong

To avoid probate after she died, Edith, an elderly widow, decided to give her home to her daughter Susan. They had always gotten along very well, and Susan assured her mother she would be able to live in the house for the rest of her life. Susan even stated so in her will, just in case anything happened to her first. Unfortunately, Susan died suddenly in an accident. Not long after, Edith was shocked when she received an eviction notice. As it turned out, Susan had made her husband joint owner of the house with her, and when Susan died he became sole owner. He had never cared about Edith and decided to sell. Susan's will didn't make any difference, because her share had transferred to her husband immediately upon her death.

Over the years, John and his wife Eleanor had planned carefully, saved and invested wisely for their retirement. They made sure their wills, which left everything to each other, were always up to date. They even had trusts in their wills for extra protection. Unfortunately, John developed Alzheimer's. As his condition worsened, Eleanor needed to sell some of their investments. But John was no longer able to conduct business, and Eleanor soon learned she couldn't sign for him—only a court-appointed guardian could. It was hard enough dealing with John's situation, but now Eleanor also had to deal with the court. She didn't know the court would *stay* involved to "protect" John's share of the proceeds. She had to keep detailed records of everything—the court insisted upon approving all expenses and the sale of their jointly owned assets. When John died several years later, Eleanor found herself back in court again—this time to probate his will.

Claire was lonely after Fred, her husband of 40 years, died. To fill her time, she started taking ballroom dancing lessons. Her instructor, a much younger "gentleman," was very quick to provide her with the companionship she was missing. And Claire, with a new sense of self-esteem, soon fell head over heels. Fred and Claire's children were shocked when their mother announced she had married her instructor. But the real shock came seven months later when Claire died—and the children learned their mother had placed everything in joint ownership with her new husband. As the new sole owner, he decided to sell everything and leave town. Because their mother had made her new husband joint owner, the children had been completely disinherited. And everything Fred and Claire had built over the years was gone.

When George and Betty moved to Florida, they gave their home in New York to their daughter Anne, a divorced mother of three. Anne later remarried and, as a wedding present to her new husband, she changed the title on the house from her name to both their names, as husband and wife. Not long after, Anne suddenly became ill and died. Her husband, now the sole owner, promptly booted the children (all teenagers) out of the house. George and Betty will undoubtedly have many sleepless nights—and regrets—over this situation.

When Edward and Beth married, they both had children and assets from previous marriages. They had new wills prepared, with each leaving their separate assets to their own children. When Edward died ten years later, Beth's attorney advised her that, as a surviving spouse in that state, she was entitled to a percentage of all of Edward's assets—including the 300-acre farm that had been in his family for generations. Although she knew Edward had wanted the farm to go only to his children, she felt that she and her children had a right to part of it. She decided to contest Edward's will, prompting a bitter and expensive court battle. Eventually Beth won. But the farm had to be sold to pay the expenses, and the closeness the family had developed during Edward's lifetime had been destroyed.

Introduction

People want to do the right thing for themselves and their families. But, all too often, their good intentions have tragic results. The sad part is these unhappy endings are often avoidable. If they had just known what could happen, chances are they would have done things differently.

What we're talking about is called estate planning. It's not just for "wealthy" or "old" people (whatever those are). It's something *you* need to do—regardless of your age, marital status, or wealth—if you want to keep control of your assets (your estate) and of decisions about your medical care when something happens to you. And it's important to plan now, while you can, because with estate planning, no one gets a second chance.

This booklet is important to you and your family because, in effect, it gives you the second chance these people didn't have. We'll look at six basic ways people "plan" their estates. (You're already using at least one of them now, even if you think you haven't done any estate planning.) We'll explain what can happen when you use them. We'll show you how one plan gives you far more control than the others.

And we'll explain it all in clear, conversational English—so you can understand it—because we want your good intentions to have a happy ending.

1 Losing Control with A WILL

Contrary to what you've probably heard, a will may not be the best plan for you and your family. That's primarily because a will does not avoid probate when you die. All wills—including those with trusts in them—must be admitted to the probate court before they can go into effect. Also, a will provides no protection if you become physically or mentally incapacitated. And it probably doesn't give you the control you think it does if you have minor children or grandchildren.

Let's look at each of these situations and see what happens when you have a will.

What is probate and why do we have to go through it?

Probate is the legal process through which the court makes sure that, when you die, your will is legally valid, your debts and taxes are paid, and your assets are distributed according to the instructions in your will. Probate is *the only legal way* to take your name off the title of an asset after you have died and put a new owner's name on.

Not everything you own is automatically subject to probate. Jointly owned assets that transfer to the surviving owner and assets with a valid beneficiary designation (like an insurance policy) generally do not go through probate. But there can be some significant problems with both. You'll want to finish reading this booklet before you rely on them.

Probate does not happen automatically. Someone, usually a relative or your executor, must petition the court for probate proceedings to begin—for example, when checks need to be written, or when an asset needs to be sold or transferred to a new owner.

What's bad about probate?

It can be expensive. A survey by AARP (American Association for Retired Persons) found that probate is big business. In fact, AARP estimates that probate costs could top $2 billion a year—$1.5 billion for attorneys, and hundreds of millions more for bonding companies, appraisers and probate courts.

Assets titled in your name only must go through probate before they can be distributed to your heirs.

Probate costs must be paid from your estate before your assets can be fully distributed to your heirs. They vary widely from state to state, but usually are estimated at 3-8% of an estate's gross value.

Some states actually calculate probate costs on the total gross value of an estate, *before* debts are paid. So, for example, if your home is valued at $200,000 when you die, probate costs would be calculated on the full $200,000—even if the mortgage is $180,000.

Who gets most of this money? The biggest expense is legal and executor fees. Some states have regulated (statutory) fee schedules for attorneys and executors, so you can look on a chart and find out what it should cost to probate an estate.

Other states use what is called a reasonable fee system. The problem with "reasonable" fees is there is no way for you to know what these fees will be until the entire process has been completed.

Why should I care about probate fees in other states? If you own assets (especially real estate, like a vacation home) in other states, your family will probably face multiple probates, each one according to the probate laws and costs of that state. They will also probably need to hire an attorney in each state.

But I don't own that much. Why should I be concerned about probate? Generally, probate costs take a larger percentage from smaller estates (which can least afford it) than from larger ones. If someone tells you probate is not expensive, ask for a written estimate of what it would cost to probate your estate if you and your spouse died today.

The following chart shows fees in California, Florida and New York for just the attorney and executor. Probate fees in your state may be higher or lower.

Estate Value	Combined Fees For Attorney and Executor*		
	California	Florida	New York
$100,000	$8,000	$6,000	$10,000
$200,000	$14,000	$12,000	$18,000
$500,000	$26,000	$30,000	$38,000
$1,000,000	$46,000	$60,000	$68,000
$2,000,000	$66,000	$110,000	$118,000
$5,000,000	$126,000	$250,000	$268,000

**Statutory fees for California and Florida. New York fees based on attorney's "reasonable" fees being equal to statutory executor fees. Filing, appraisal, and publication fees, bonds and legal fees for "extraordinary" services (will contest, tax advice, tax returns, and real estate transactions, for example) are in addition.*

Regardless of how fees are initially calculated, a judge can and often will allow higher fees, depending on the time and/or circumstances involved. Generally speaking, the more time the attorney and executor have to spend probating an estate, the more it will cost.

Probate takes time, usually nine months to two years, and sometimes much longer. During part of this time, your assets will probably be frozen so an accurate inventory can be taken, and nothing can be distributed or sold without the court's and/or executor's approval. If your family needs money to live on, they must request a living allowance, which may or may not be approved. Also, assets could drop in value if the court and/or executor cannot react quickly enough to sell them—for example, if your family wanted to sell stocks in a declining market.

Your family has no privacy. Probate is a public process. Any "interested party" can find out details about your estate, including who the heirs are, how much and when they will inherit, their addresses, etc. This information is often used as leads by unscrupulous solicitors. If your estate goes through probate, some may call on your family.

You may have intentionally left one or more heirs out of your will. But the probate process invites them to contest, and *the court*—not you or your family—will decide what they will receive. If you are a business owner, the lack of privacy can be devastating to your business. Competitors can get valuable inside information about your financial records and personal family affairs—courtesy of the probate system.

You and your family lose control. The probate process, not you or your family, has control over how your will is interpreted, how much probate will cost, how long it will take and what information is made public. Families are used to handling their affairs privately and independently. Suddenly losing that control to a legal process and having to pay for it can be frustrating.

Note: Just as probate fees vary from state to state, probate procedures also vary. Most states allow very small estates to bypass probate. But few qualify because the limits are typically very low—in some states, as low as $15,000 in total estate value. A few states have special processes for surviving spouses. Also, some states now allow "informal" probate; however, AARP's survey concluded that it frequently does not save the time and money it was intended to save.

Wills—and Incapacity

Becoming incapacitated and losing control is a valid concern of millions of older Americans and those who will care for them. With advancements in health care, people are living longer. But this also means that more of us will reach the point where we can no longer take care of ourselves. Few people plan for this possibility—or they mistakenly think a will is all they need. As a result, many people end up under control of the courts *before* they die.

Why would the court get involved if I have a will?

Think about this for a few moments. If you can't handle your affairs because of mental or physical incapacity—for example, if you have a stroke or a heart attack, develop dementia, or are injured in an accident—who will conduct business for you?

Sooner or later, your signature will probably be required for something—to withdraw savings, sell/refinance assets to pay your expenses, etc. Of course, you may still be able to sign your name but, in the opinion of others, are unable to make sound decisions.

Some people think the person they have named as executor in their will can automatically step in and take care of their affairs. But your will can't go into effect until you die, so it can't help. Your family or friends can't just take over and sign your name for you. Someone (a relative or friend) will have to petition the court to declare you incompetent and appoint someone to act for you—whether or not you have a will.

What happens when the court gets involved?

A public hearing will be held to determine your competency. If the court agrees that you are unable to handle your affairs and finds you incompetent, you will lose most of your rights as a citizen. And you and your family will lose control, because once the court gets involved, it usually stays involved to "protect" your interests, until you recover or die.

In some states, this court-controlled process is called a conservatorship. In others, it's called a guardianship. Some people refer to it as a "living probate" because it's similar to probate at death, but you're still alive.

This process can be embarrassing because records and proceedings are open to the public. It can be expensive because of court costs, examinations and testimony by a qualified physician(s), attorney fees, auditor fees, and bonds. It can be time consuming because the person the court appoints to act for you must keep detailed records and submit all expenses to the court for approval. You'll have no say in who this court appointee is. The court could appoint your spouse, but it could also appoint a relative you dislike, or even a professional guardian/conservator who is a stranger to you.

If you recover, you must prove to the court that you are now competent and able to handle your own affairs, which may be difficult since the court has declared you *in*competent. This process does not replace probate at death. When you die, your family will have to go through probate again to have your will enforced.

Wouldn't a power of attorney prevent court control of assets at incapacity?

Maybe, but maybe not. A power of attorney is a legal document that gives someone authority to conduct business for you if you are unable to do so. However, all powers of attorney end at death, so they can't be used to avoid probate—a surprise to some people. Many also end at incapacity. Legally, a *durable* power of attorney remains valid through incapacity, but it may not work, either.

That's because some financial institutions won't accept *any* power of attorney. Others will only accept one if it is on their own form and they know this is what you want. The reason is they have no way of knowing if you have changed your mind, and they do not want to be held liable for giving your assets to someone you didn't want to have them.

If the power of attorney does work, it may work *too* well. Giving someone power of attorney is like giving that person a blank check to do whatever he/she wants with your assets. You have no control. Even if you leave instructions, you have no guarantee they will be followed. You could even recover to find you own nothing in your own name.

A power of attorney has benefits when used under proper circumstances, but relying on one to prevent the court from taking control of assets at incapacity is risky at best.

WILLS—AND YOUR MINOR CHILDREN OR GRANDCHILDREN

Most parents think if they name a guardian for their minor children in their will and something happens to them, that person will automatically be able to use the inheritance to take care of the children. But that's not what happens.

Instead, when the will is probated, the court will set up a guardianship for the child and appoint a guardian to raise the child. Usually the court will appoint the person named in the parent's will, but it could appoint someone else.

However, the court, not the guardian, will control the inheritance until the child reaches legal age (18 or 21). At that time, the child automatically receives the entire inheritance. Most parents prefer that their children inherit at a later age but, with a simple will, you have no choice.

Special Note to Divorced or Separated Parents: Courts typically prefer to see a natural parent as guardian whenever possible so, even if you name someone else, the court will probably appoint your “ex” as guardian. A disinterested or irresponsible parent may suddenly become very interested in the child when he/she learns that guardians are entitled to be paid for their services. Also, many courts simply do not have the resources to monitor all guardianships carefully. So it’s possible your “ex” may have unsupervised access to the child’s inheritance. (Also, divorced or separated parents often unintentionally disinherit their children; see “Losing Control with Joint Ownership” on the next page.)

Wouldn’t a children’s trust in a will prevent court control of the assets?

It would prevent the court from controlling the inheritance after you die, but the will must be probated first. The children’s trust is funded with your assets *after* your will is probated. By the time the assets get into the trust and expenses are paid, it could be “too little, too late” to provide for your children the way you had planned.

And what if you become incapacitated due to illness or injury? Since you are still alive, your will can’t be probated—so the children’s trust can’t go into effect. If a single parent becomes incapacitated, or if both parents become incapacitated, the parent(s) *and* child will probably be placed under control of the courts.

Can the court take control of assets I leave to my minor child or grandchild?

If you leave titled assets outright to a minor child in your will, make a minor a joint owner, or give a titled asset to a minor child, you could unknowingly be setting up a court guardianship.

That’s because minor children can be on a title, but they cannot conduct business in their own names. So as soon as the owner’s signature is required to sell, refinance, or transact other business, the court will have to get involved. Only a court appointee can legally sign for the child; not even a parent can do it. And the court will stay involved to “protect” the child’s asset(s) until he/she reaches legal age.

You could also cause a court guardianship if you list a minor as a beneficiary—for example, on a life insurance policy, your IRA, retirement benefits, etc. That’s because the institutions that pay beneficiary proceeds (like an insurance company) will not knowingly pay large sums of money to a minor child. Nor will they pay to another person *for* the child, such as to a parent. They just don’t want the legal responsibility and will usually insist on paying through the court.

If you’ve been surprised by some of this, you’re not alone. Most people are not aware of how little control they actually have with a will.

2 Losing Control by DOING NOTHING

Doing nothing is another *very* common plan. Many people procrastinate and don’t do anything for any number of reasons. They think they’re too busy. Or they don’t own enough. Or they’re not old enough. Or they’re confused and don’t know who can help them.

What happens if you don’t do anything? If you own assets in your name and you become incapacitated, the court can take control just as we explained. And when you die, your estate will go through probate. The only difference is that your assets will be distributed according to state law, which is probably not what you would have wanted. For example, in many states if you are married and have children, they will each receive a share of your estate. This means your spouse could receive only a fraction of your estate, which may not be enough for him or her to live on. And if you have minor children, the court will control their inheritances and it will appoint their guardian(s)—without knowing whom you would have chosen.

This is probably the worst situation. Because you have absolutely NO control.

3 Losing Control with JOINT OWNERSHIP

Joint ownership is probably the most commonly used estate plan, although you may not have thought of estate planning at the time you purchased the asset. If you are married, you and your spouse probably own most of your assets jointly. After all, that seems like the most fair thing to do, doesn't it?

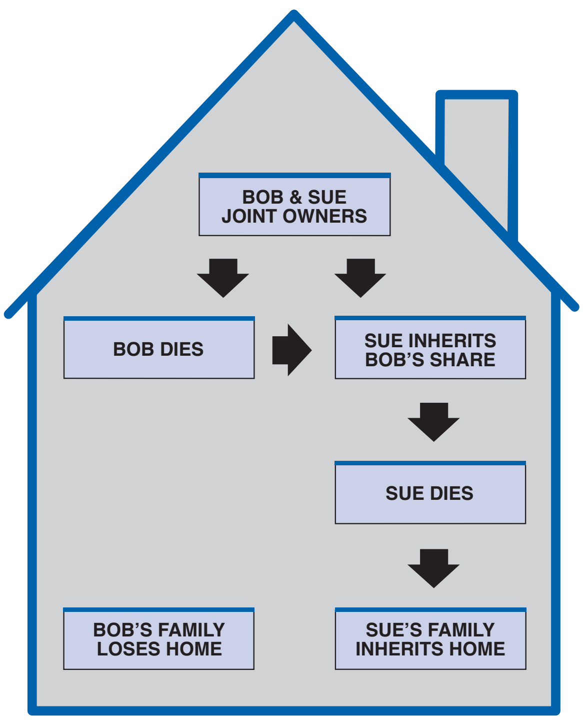
The type of joint ownership most people use, and the one we will be discussing here, is called "joint ownership (or joint tenants) with right of survivorship." A lot of people have come to rely on joint ownership as an alternative to wills and probate. Some professionals even recommend it as a way to avoid probate.

Doesn't joint ownership avoid probate?

Not really—usually it just *postpones* it. When one joint owner dies, ownership *will* transfer to the other owner without probate. But when the surviving owner dies without adding another joint owner (which frequently happens), or if both owners die at the same time, the asset must be probated before it can go to the heirs.

Are there other problems with joint ownership?

Joint ownership probably causes more problems than any other estate plan. For example, you could unintentionally disinherit your own family, as shown in the illustration below. If you die first, you have no way of controlling what happens to the asset. Jointly owned assets are not controlled by your will because the transfer takes place immediately upon your death. The asset will be owned by the surviving owner, who can do whatever he/she wants with it.



When a joint owner dies, his/her share immediately goes to the other owner. This can cause you to unintentionally disinherit your own family.

There are other risks. It's very easy to add a co-owner. But taking someone's name *off* the title can be very difficult; if your co-owner doesn't agree, you could end up in court. There could be gift and/or income tax problems. Your chances of being named in a lawsuit and of losing the asset to a creditor are increased. If your estate is larger, you could be limiting your tax planning options. And if your co-owner becomes incapacitated, you could find yourself with a new "co-owner"—the court!

Why would the court get involved if my co-owner is incapacitated?

Many people mistakenly think that joint ownership of all assets is the same as a joint bank account, on which either owner can sign checks, make deposits and withdrawals, etc. But on many assets, especially real estate, *all* signatures are required to transact business. If you need your co-owner's signature to sell or refinance and he/she is incapacitated, you'll have to ask the court to appoint someone to act for your co-owner—even if the ill owner is your spouse. And, remember, once the court gets involved, it will usually stay involved to protect that owner's interests.

If joint ownership is starting to sound complicated, that's because it can be. Just remember that whenever you have a co-owner, you could easily lose control.

4 Losing Control by GIVING AWAY ASSETS

Some people actually re-title assets in their children's names while they are living, thinking it will make things easier for their children when something happens to them.

The first problem with giving away an asset is—it's gone. What if you want or need it back? You may think your children would give it back to you. But things change. Your children could sell the asset against your wishes or lose it to their creditors. If you outlive your children or they divorce, a daughter- or son-in-law could end up owning the asset. Would she/he give it back to you?

The second problem is taxes. Currently, if you give someone other than your spouse more than $13,000 in one year, a *gift* tax may be involved. (This amount is tied to inflation and is adjusted from time to time.) And when your children sell the asset, they will probably pay *capital gains* tax. That's because the asset would not receive a stepped-up basis.

The basis of an asset is the value used to determine gain or loss for income tax purposes. If you give the asset to your children while you are alive, it keeps your basis (what you paid for it). But if they receive it as an inheritance through a will or trust, it can receive a new stepped-up basis, to fair market value as of the date of your death.

Let's say you purchased your home years ago for $50,000 and it's worth $250,000 when you die. If you transfer title to your children while you are alive, the basis would be $50,000 (what you paid for it). If they sell the house for $250,000, they would pay $30,000 in capital gains tax on the $200,000 gain (15% of $200,000 = $30,000). But if your children receive it as an inheritance, the basis would be $250,000. If they sell it for $250,000, they would pay no capital gains tax.

Substantial gifts may also disqualify you from receiving Medicaid and SSI (Supplemental Security Income) benefits for a significant period of time.

Having said all this, gifting can be a great way to reduce estate taxes if your estate is larger and you can afford to give away an asset. However, gifting can be complicated. It should only be done with assistance from an experienced professional. And never give away an asset you may need.

5 Losing Control with BENEFICIARY TRANSFERS

Using beneficiary designations to transfer assets is becoming more and more common. Many assets—like life insurance policies, IRAs, retirement plans, some bank accounts (pay-on-death accounts) and even some brokerage accounts (transfer-on-death accounts)—let you name a beneficiary. When you die, these assets will be paid directly to the person(s) you have named as your beneficiary without probate. At least that's the way it's *supposed* to work. Here are some examples of situations you may not have considered:

- If your beneficiary dies before you (or you both die at the same time), or if you list "my estate" as the beneficiary, the asset will have to go through probate so it can be distributed with the rest of your assets.
- If your beneficiary is incapacitated when you die, the court will probably take control of the funds through a conservatorship or guardianship. That's because the institution paying the proceeds (an insurance company, for example) will not knowingly pay to an incompetent person, and will probably insist on court supervision.
- If you list a minor child or grandchild as a beneficiary, you could be setting up a court guardianship for the child.
- If your estate is larger, you could be limiting your tax planning options. This could cause serious tax consequences later on for your family.

Beneficiary transfers may seem simple. But, here again, you can easily lose control.

Next, you'll learn about a way you can plan your estate that will let you keep control of all your assets while you are living, if you become incapacitated, and even after you die.

6 Keeping Control with A REVOCABLE LIVING TRUST

There are several different kinds of trusts.

An *irrevocable trust* is frequently used in tax planning. After it has been set up, you usually cannot change it or remove assets that have been transferred into it.

A *testamentary trust* is created after you die by a provision in your will. It can be used in tax planning or to manage assets for minors or other beneficiaries. However, as we explained earlier, a testamentary trust does not avoid probate and it provides no protection if you become incapacitated because it is part of your will.

The kind of trust we are discussing in this booklet is called a *revocable living trust*. (To keep things simple, we will often refer to it from now on as a living trust or trust.)

What is a revocable living trust?

A revocable living trust is a legal document that, like a will, includes your instructions for what you want to happen to your assets after you die. But, unlike a will, a living trust can avoid probate at death. It can prevent the court from controlling your assets if you become incapacitated. And it can give *you*, not the courts, control of the assets you leave to your minor children and/or grandchildren.

How does a living trust avoid probate and prevent court control at incapacity?

When you set up a living trust, you transfer assets from your individual name to the name of your trust, which you control—such as from "John and Mary Smith, husband and wife" to "John and Mary Smith, Trustees under trust dated (month/day/year of trust)."

Technically, *you* no longer own anything, so there is nothing for the courts to control when you die or if you become incapacitated. The concept is very simple, but this is what keeps you and your family out of the courts—even if you own assets in other states.

Do I lose control of the assets I put into my living trust?

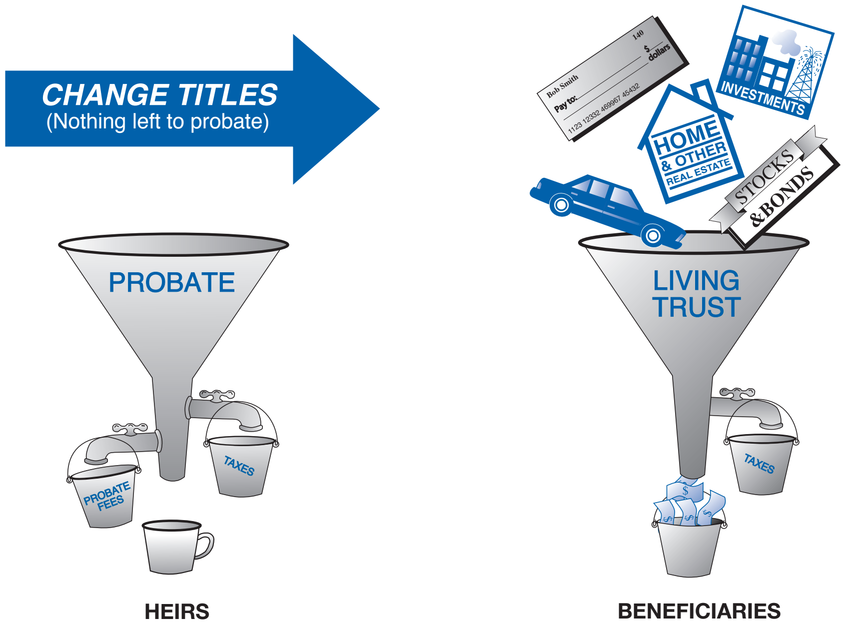
Absolutely not. You keep full control. As trustee of your trust, you can do everything you could do before, including buying, selling, investing, etc. You can make changes or even cancel your trust; that's why it's called a *revocable* living trust. In fact, the Internal Revenue Service considers putting assets in a revocable living trust to be a "non-event" because you can take them out at any time. *Nothing changes but the names on the titles.* And, as you'll see in the next few pages, you'll actually have *more* control with your assets in a living trust than you do now.

How does a living trust work?

When you set up a living trust, you become the grantor—the person whose trust it is. If you are married, you and your spouse can be co-grantors, or you can be grantors of your own separate trusts. Only you, the grantor, can make changes to your trust. That's how you keep control.

You will need to name someone, called the trustee, to manage the assets in your trust. You can be your own trustee. If you are married, you and your spouse can be co-trustees. As long as you are a trustee of your trust, you file the same income tax returns as you do now, using your own social security number.

Putting Assets Into A Living Trust Avoids Probate



Assets titled in your name must go through probate before they can go to your heirs. But assets that you re-title in the name of your living trust completely avoid probate and go straight to your beneficiaries. Your estate will still have to pay final income taxes, but your living trust can reduce or eliminate estate taxes.

Can I name someone else as my trustee?

Yes. You could name an adult son or daughter, another relative or a good friend to be your trustee or co-trustee. You could also name a corporate trustee; that's a bank or trust company that manages trust assets.

However, even if you name someone else as trustee, you're still in control. As long as you are competent, you can replace your trustee at any time if you don't like the job they're doing for you, because you are the grantor of your trust.

Why would I consider a corporate trustee?

Many people select a corporate trustee as trustee or co-trustee if they don't have the time, ability or desire to manage their own trusts. For example, you and your spouse may be in declining health. You may be a widow or widower who doesn't have much experience managing investments. Maybe you want to do other things with your time now, like travel. Or perhaps you just don't want the worry and headaches of managing your assets anymore.

Corporate trustees are in the business of managing trusts—they are reliable, objective, government regulated, experienced investment managers, and by law must follow the instructions in your trust. Unlike an individual, they won't die, become ill, or move away. They do charge for their services, but their fees are usually reasonable and are often more than offset by their investment performance.

What happens if I become incapacitated?

If you have named someone else as your trustee or to be a co-trustee with you (for example, your spouse or a corporate trustee), they will continue to manage your financial affairs according to your trust's instructions for as long as necessary. If you recover, you automatically resume control. If you are the only trustee or if your co-trustee is unable to act (for example, if your spouse is also incapacitated or has died), the successor trustee(s) you personally selected will step in and act for you.

Who decides if I am incapacitated?

Actually, *you* can. Your living trust can include a provision that lets you specify who has the authority to determine your ability to manage your affairs. You can even specify how many and what kinds of doctors you want to examine you.

What happens when I die?

Your trustee or co-trustee essentially has the same duties as an executor. He/she collects any income or benefits, pays your remaining debts, sees that tax returns are filed, and distributes assets according to your trust's instructions. If estate tax planning is involved, he/she will work with your team of professionals to make sure everything is done properly. All of this is handled efficiently and privately, with *no* court interference. Again, your successor trustee will perform these duties if you are the only trustee or if your co-trustee is unable to act.

Who can be successor trustees?

Successor trustees can be individuals (your adult children, other relatives or trusted friends) and/or a corporate trustee. If you choose an individual, you should name more than one in case your first choice is unavailable or unable to act. You can name two or more to act together.

How do I know my successor trustee will do what I want?

A trust is a binding legal contract, and trustees are fiduciaries; by law, they have a legal duty to follow your trust's instructions and act in a prudent (conservative) manner at all times for the benefit of your beneficiaries. If your successor trustee were to abuse his/her duties by not following the instructions in your living trust, he/she could be held legally liable.

Choose your successor trustee(s) carefully—they have a lot of responsibility. Consider how busy your candidates are with their own affairs, how far away they live and how capable they are. Talk to them and see if they would be willing to serve. If you have any doubts or concerns, you should probably consider a corporate trustee.

By the way, a successor trustee has no control or say in your affairs until he/she steps in at your incapacity or death. And, of course, you can change your successor trustee(s) at any time until you become incapacitated or die.

Who can be my beneficiaries?

These are the people and/or organizations who will receive your assets after you die. Most people leave their assets to relatives, but you can leave them to anyone or to any organization(s) you wish. Many people like to include a favorite charity or religious/fraternal organization.

When will my beneficiaries receive their inheritances?

With a living trust, that's up to you. Without one, it would be up to the courts. One of the most powerful benefits of a trust is that you can keep control over who will receive your assets, and when and how they will receive them. (This is one area where you definitely have more control when your assets are in a trust.)

Since the court is not involved, assets can be distributed as soon as your successor trustee can wrap up your final affairs. Or assets can stay in your trust, managed by the person or corporate trustee you have chosen, until your beneficiaries reach the age(s) you want them to inherit. For example, some parents prefer to give children or grandchildren their inheritances in installments so they have more than one opportunity to use the money wisely.

Your trust can continue longer to provide for a loved one with special needs without disturbing valuable government benefits. If you are concerned about a beneficiary's spending habits, you could have the trustee provide periodic income and keep the rest of his or her inheritance in the trust. You could also supplement the income of a child who wants to teach, be a pastor or missionary, or do other worthwhile but typically lower-paying work.

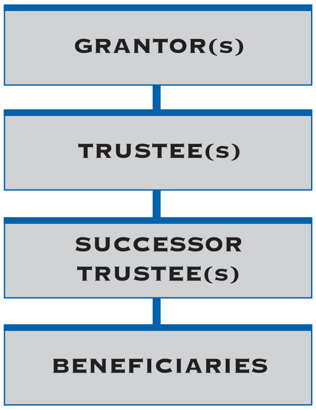
Your Living Trust Team

Grantor(s): Person(s) creating the trust—you (and your spouse). Only a grantor can change or cancel his/her trust. (Also called settlor, trustor or donor.)

Trustee(s): Manages the assets in your trust now. Usually you (and your spouse) and/or a corporate trustee (bank or trust company).

Successor Trustee(s): Will step in and manage the assets in your trust for as long as necessary if you (and your spouse) become incapacitated. At your death(s), your successor trustee will distribute your assets (or keep them in your trust) according to your instructions. Successor trustees can be adult children, trusted friends and/or a corporate trustee.

Beneficiaries: Persons and/or organizations who will receive the assets in your trust when you (and your spouse) die.



Even if you feel that your beneficiary would handle the inheritance well, you may want to keep the assets in the trust to protect them from creditors, current spouses, ex-spouses, potential lawsuits and future death taxes. Your trustee can make distributions to the beneficiary as needed, but the assets that remain in the trust would be protected from these creditors and predators and, if invested well, could even help provide for future generations.

Most people would like to leave their children or grandchildren enough so they can do anything they want, but not so much that they do nothing. With a trust, you can do that and more.

How does a living trust let me control assets for minor children?

As long as the assets stay in a trust, you prevent the court from taking control of the inheritance at your death or incapacity.

If you have minor children, you will name a guardian to raise them if something happens to you. You will also name a trustee to manage the assets and provide money for expenses until each child reaches the age(s) you want him or her to inherit. The trustee can be one or more individuals, including the person you name as guardian, and/or a corporate trustee. (Naming one person as trustee and guardian may seem convenient. But the person you want to raise your kids may not be your best choice to handle the money.) The court still has the right to approve your choice of guardian, but it cannot control the inheritance. The trustee can automatically step in at your death or incapacity and follow your instructions, with no court interference.

If you are divorced or separated: Since you control who will manage the assets, an irresponsible "ex" may have no incentive to even get involved. And if the other natural parent isn't interested, the court may go along with your choice for guardian.

Grandparents: You can name a trustee (perhaps one of the child's parents or a corporate trustee) to manage the assets until each child reaches the age(s) you want him/her to receive the inheritance. You may also want to inform their parents about a living trust to prevent court control if they were to experience incapacity or an early death.

Does a living trust reduce my taxes?

A revocable living trust has no effect on your *income* taxes. Income taxes must be paid every year you receive income, even the year you die. However, if you are married, a living trust can reduce or, depending on the size of your estate, even eliminate *estate* taxes.

What are estate taxes and who has to pay them?

Estate taxes are different from, and in addition to, income taxes and probate fees. Depending on how much you own when you die, estate taxes may have to be paid before your assets can be fully distributed to your beneficiaries. Federal estate taxes are expensive (historically 45-55%) and they must be paid in cash, usually within nine months after you die. Because few estates have this kind of cash, it has often been necessary to liquidate assets to pay these taxes.

Year of Death	Exempt Amount	Top Tax Rate
2011 and 2012	$5 million*	35%
2013 and after	$1 million	55%

* Adjusted for inflation in 2012

Your estate will have to pay federal estate taxes if its net value when you die is more than the exempt amount set by Congress at that time. In 2011 and 2012, the federal exemption is $5 million (adjusted for inflation in 2012) and the tax rate is 35%. If Congress does not act before the end of 2012, the exemption in 2013 will be $1 million and the top tax rate will be 55%. (Some states have their own death/inheritance tax; your estate could be exempt from federal tax but have to pay state tax.)

How is the net value of my estate detemined?

To determine the current net value of your estate, add your assets, then subtract your debts and expenses. Include your home, business interests, bank accounts, investments, personal property, IRAs, retirement plans and death benefits from insurance policies. Keep in mind that estate taxes are based on the values when you die; your assets may appreciate between now and then.

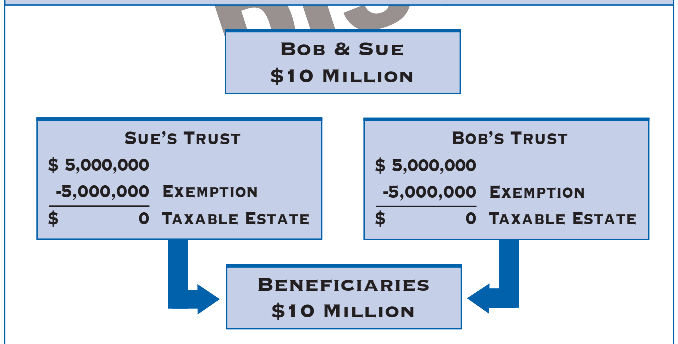
What can I do about estate taxes?

If you plan ahead, you can reduce or eliminate estate taxes. For example, if you are married, you can make sure you and your spouse use both your estate tax exemptions. Unfortunately, most married couples leave everything to each other which, although easy, can be a tax trap. Here's why.

Let's say Bob and Sue have a combined net estate of $10 million and they both die when the exemption is $5 million. Bob dies first and leaves everything to Sue. Because she is a U.S. citizen, Bob can leave her an unlimited amount and no estate tax will be due when he dies. When Sue dies, her estate of $10 million uses her $5 million exemption. The tax bill on the remaining $5 million? $1,750,000! The problem with leaving everything to your spouse is you waste an exemption.

Congress tried to fix this. If one spouse dies in 2011 or 2012, the executor of the estate may transfer any unused federal estate tax exemption to the surviving spouse. But there are still problems. For example, let's say Sue marries Tom after Bob dies; if Tom dies before Sue, she will lose all of Bob's unused exemption. In addition, by leaving everything to Sue, Bob has no control over his share of their estate; Sue can do whatever she wants with the assets, including disinheriting Bob's children from a previous marriage. And when Sue dies, the entire estate, including any growth on the assets, will be taxed at rates in effect at that time.

How a Living Trust Saves Estate Taxes



Tax planning in a living trust lets you and your spouse use both your estate tax exemptions. Using the 2011 and 2012 exemption and tax rate, you could transfer up to $10 million estate tax free to your loved ones, saving up to $1,750,000 in federal estate taxes.

If Bob and Sue plan ahead, they can use both of their exemptions and pay no estate taxes. A tax-planning provision in their living trust splits their $10 million estate into two trusts of $5 million each. When Bob dies, his trust uses his $5 million exemption. When Sue dies, her trust uses her $5 million exemption. This reduces their taxable estate to $0, so the full $10 million can go to their beneficiaries. (Your attorney may prefer to start with two separate trusts instead of one as shown here.)

There are other benefits to this planning. For example, Bob can keep control over how his part of their estate is managed and distributed instead of letting Sue have complete control. The assets in Bob's trust are valued and taxed only at his death; any appreciation after he dies will not be included in Sue's estate. Yet, the assets in Bob's trust can still be available for anything Sue needs.

As this chart shows, if you are married, planning ahead with a living trust can save thousands of dollars in estate taxes and probate fees. This same estate tax planning can also be done in a will, but you would not avoid probate or enjoy the other benefits of a living trust.

	Simple Will			Living Trust with Tax Planning		
Estate Size	Estate Taxes*	Probate Fees**	Total	Estate Taxes	Probate Fees	Total
$ 1,000,000	$ 0	$ 30,000	$ 30,000	$ 0	$ 0	$ 0
2,500,000	0	75,000	75,000	0	0	0
5,000,000	0	150,000	150,000	0	0	0
7,500,000	833,000	225,000	1,058,000	0	0	0
10,000,000	1,708,000	300,000	2,008,000	0	0	0

**In 2012 **estimated at 3% Fees for documents and/or estate tax return not included.*

What if I'm not married?
This planning feature is only available to married couples. However, an experienced estate planning attorney will be able to recommend other options to help you save estate taxes.

What's involved in setting up a living trust?
You make the basic planning decisions: inventory your assets, decide who will be your trustee, successor trustees, and beneficiaries. The legal document is then prepared from your decisions. After you've approved and signed the document, you transfer your assets to your living trust. This is called funding your trust.

Do I need to fund my living trust now?
If you want the control we've been talking about, you must fund your living trust now while you are able. Your living trust can only control the assets that have been transferred into it.

Is it hard to put assets into my living trust?
No, and your attorney, trust officer, financial adviser and insurance agent can help. You'll need to change titles on real estate (local and out-of-state) and other assets with formal titles—savings, stocks, CDs, other investments, insurance, etc. In most states, changing titles will not trigger a revaluation of your real estate or disturb your mortgage in any way. Most living trusts include jewelry, clothing, home furnishings, art, and other personal property that do not have formal titles.

You'll also need to change beneficiary designations on some assets (like insurance) to your living trust so the court cannot control them if a beneficiary is incapacitated or no longer living when you die. In these cases, your trust will receive the proceeds and the funds can be used to care for your incapacitated beneficiary or can be distributed according to your instructions.

There may be some assets you may not want in, or that cannot be put into, your trust. For example, IRAs and other tax-deferred savings plans can be exceptions. Also, your attorney may have a valid reason (like avoiding a potential lawsuit) for leaving a certain asset out of your trust.

Doesn't it take a lot of time to change titles and beneficiary designations?
It will take *some* time. But you can do it now, or you can pay the courts and attorneys to do it for you later when you cannot.

Benefits of a Living Trust

- Avoids probate at death
- Avoids multiple probates if you own assets in more than one state
- Prevents court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Quicker distribution of assets to beneficiaries
- Assets can remain in trust until beneficiaries reach the age(s) you want them to inherit
- Can reduce or eliminate estate taxes
- Inexpensive, easy to set up and maintain
- Can be changed or cancelled at any time until your incapacity or death
- Difficult to contest
- Prevents court from controlling finances when minor children inherit
- Can protect dependents with special needs
- Prevents unintentional disinheriting and other problems of joint ownership
- Professional asset management if you use a corporate trustee
- Peace of mind

Think about this for just a minute. Who knows better than you what you own and where all the paperwork is located? And if there is a problem with a title, wouldn't it be better for you to straighten it out now than for your family (and attorneys) to try to resolve it without your help?

One of the benefits of a living trust is that it organizes all of your assets under one plan, with one set of instructions. What could be easier for you and your family?

Do I still need a will?

Yes. Your living trust plan should include a pour-over will, which acts as a kind of safety net. When you die, the pour-over will "catches" any forgotten asset and sends it into your trust. The asset may still have to go through probate first, but it can then be distributed as part of your overall plan. Also, if you have minor children, a guardian will need to be named in the will.

Is a living trust expensive?

Not when compared to the costs and loss of control that come with probate at death and court interference at incapacity. How much you pay for your living trust will depend primarily on your goals and what you want to accomplish. Be sure to ask for an estimate in advance.

If you are your own trustee, you will pay no management fees. Successor trustees are entitled to receive a reasonable fee for their services when they step in for you, although family members rarely accept one. If you name a corporate trustee as your trustee or successor trustee, they will start charging a fee only when they start to act.

Should I have an attorney prepare my living trust?

Yes, preferably one who specializes in living trusts. An experienced attorney can provide valuable guidance and assistance, and assure everything is done properly.

How long does it take to get a living trust?

It should only take a few weeks to prepare the documents after you make the basic decisions. Then you'll need to change titles and beneficiary designations.

Do I have to go back to my attorney to change my living trust?

Only if you change something in the actual document—your trustee(s), successor trustees, beneficiaries, etc. A major event in your family (marriage, divorce, birth, death, incapacity) should prompt you to think about your trust and make appropriate changes. These need to be made by your attorney, but they are usually inexpensive to make. You do not need to change the document when you buy or sell assets; just title the new ones in the name of your trust.

Does a living trust protect my assets from creditors?

Not while you are living. That's because this is a *revocable* living trust, so you can put assets in or take them out at any time. But after you die, it becomes an *irrevocable* trust, which can protect the assets from your beneficiaries' creditors. If you are concerned about protecting your assets from creditors or potential lawsuits now, be sure to ask your attorney about some options.

Can a living trust be contested?

Yes, but it is often more difficult than contesting a will. In many states, because there is no probate, assets can be distributed quickly and privately. Disgruntled heirs may not even know you have died until after the assets have been distributed. If they want to contest, they would have to hire an attorney and sue the trustee and/or each beneficiary individually. This costly and time-consuming process often discourages even the greediest "heir" from contesting a trust.

Are living trusts new?

Not at all. They have been used effectively for hundreds of years.

Why haven't living trusts been used more in the past?

One reason may be that probate is big business—so *your* best interests may not have come first. Another reason is that estate planning is complicated, and many professionals did not have the necessary training and experience in this area. So, for years, only people who could afford the services of the top estate planning experts were given information about trusts. In recent years, nonprofessionals have become more knowledgeable about living trusts through seminars and publications like this one. As more consumers learned about them and wanted them, more professionals became educated about them, too. Today, living trusts are widely accepted and used by the legal profession as the foundation for most estate plans.

Who should have a living trust?

Just about everyone can benefit from having a living trust. Age, marital status and wealth really do not matter. If you own titled assets and want your loved ones (spouse, children, grandchildren or parents) to avoid court interference at your incapacity or death, you need to seriously consider a living trust, and the sooner the better. You may also want to encourage other family members to have one so you won't have to deal with the courts at their incapacity or death.

Is a living will the same as a living trust?

No. A living trust is for financial affairs. A living will is for medical affairs; it lets others know how you feel about life support in case of terminal illness. However, a living will is limited because it deals only with very specific terminal situations. And, in most cases, it is not legally enforceable. A more powerful document is an advance directive for health care, or health care proxy as it is called in some states. This lets you choose the person you want to make any medical decisions for you—including life support—if you are unable to make them yourself. It's legally valid and enforceable. And it keeps the courts from interfering in these private decisions.

If I have a living trust, have I finished my estate planning?

Not necessarily. A living trust is the perfect foundation for most estate plans. And, packaged with the appropriate support documents (pour-over will, durable power of attorney, health care documents), it will be all many families need. However, depending on the size of your estate, your family situation and your goals, you may need additional planning to make sure your plan does everything you want it to do. After reviewing your situation, the attorney who prepares your living trust may have some additional options for you to consider, including irrevocable trusts, additional insurance, and/or a gifting program.

When should I set up a living trust?

Now, while you are healthy and you don't think you need one—because, remember, with estate planning, you don't get a second chance.

You've taken the first step—you're finding out about estate planning and living trusts. And that's not an easy first step for many people. After all, no one really likes to think about his or her own mortality, or the possibility of becoming incapacitated. This is exactly why so many families are caught off guard and unprepared when incapacity or death strikes. Don't wait until it's too late for you and your family. A living trust is one of the most thoughtful and considerate gifts you can give to those you love.

A COMPARISON AT A GLANCE

	With No Will	With A Will	With A Living Trust
At Incapacity* (unable to handle your financial affairs)	*Court Control:* Court appointee must keep detailed records, report to court, and usually post bond (even if appointee is your spouse). Court oversees financial affairs, approves expenses.	*Court Control:* Same as with no will.	*No Court Control:* Your successor trustee manages your financial affairs according to your instructions for as long as necessary.
Court Costs & Legal Fees	Impossible to estimate. Court and attorney usually involved until you recover or die.	Same as with no will.	Usually no court costs. Reduced legal fees. (Some attorney assistance will be helpful.)
At Death	*Probate:* Court orders your debts paid and assets distributed according to state law.	*Probate:* Debts paid and assets distributed according to your will (if valid and no contests are successful).	*No Probate:* Debts paid and assets distributed by successor trustee according to your trust's instructions.
Court Costs & Legal Fees	Your estate pays all court costs, legal and executor fees (often estimated at 3-8% or more of an estate's value).	Same as with no will. Costs can increase if will is contested.	Usually no court costs. Reduced legal fees (minimal for small estates; larger/complicated estates require more).
Time	Usually nine months to two years or longer before heirs can inherit.	Same as with no will.	Can be just weeks. Larger estates may take longer for estate tax filing, division of assets into new trusts.
Flexibility and Control	*None:* Court procedures, not your family, have control at incapacity and death. When you die, assets are distributed according to state law (probably not what you would have wanted).	*Limited:* Same as no will except assets are distributed when you die according to your will (if valid and no contests are successful). Will can be changed until incapacity.	*Maximum:* You can change/discontinue trust until incapacity. Assets stay under control of your trust, even at incapacity and after your death. More difficult than a will to contest.
Privacy	*None:* Court proceedings are public record. Family can be exposed to disgruntled heirs, unscrupulous solicitors.	*None:* Same as with no will.	*Maximum:* Living trusts are not public record. Your family can take care of your financial affairs privately.
Minor Child	*Court Control:* Court controls inheritance, appoints guardian. All decisions and financial transactions require court approval. Child receives full inheritance at legal age.	*Court Control:* Same as with no will. Children's trust in a will provides limited protection, but will must be probated first and cannot go into effect at your incapacity.	*Minimal Court Control:* Trustee you select manages inheritance and provides funds for expenses until child reaches age(s) you specify. Court approves guardian, but has no control over inheritance.
Court Costs & Legal Fees	Impossible to estimate. Court and attorney usually involved until child reaches legal age. All costs paid from child's inheritance.	Same as with no will. Costs may be less with children's trust in a will.	*Minimal.* Legal fees only as attorney is needed/desired. (Some attorney assistance can be helpful.)

*Advance directive for health care/health care proxy can prevent court interference in medical decisions.

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