

COMMONLY ASKED QUESTIONS ABOUT REVOCABLE LIVING TRUSTS

1. What is a Revocable Living Trust?

A revocable Living Trust is often referred to as a substitute for a Last Will and Testament and is a contract entered into by you to 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. Does the Living Trust prevent you from borrowing against assets in the Trust?

No. Your ability to borrow against assets in the Trust has not been affected in any way.

3. How does a Living Trust help me to avoid probate?

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?

Yes, Living Trusts are recognized in each of the fifty states and in many foreign countries as well.

5. How are a Last Will and Testament and a Trust different?

A Last Will and Testament 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.

6. What is an Irrevocable Trust?

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. Revocable Living Trusts are not irrevocable.

7. Should my children read my Living Trust?

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.

8. Where should I keep my Living Trust?

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. Let your Successor Trustee know where your Trust can be found.

9. Who are the parties to the Trust?

The parties to a Trust are, the Grantor(s)/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, who benefit from the Trust income and assets. In most Living Trusts, the Grantor(s)/Settlor(s), the Trustee(s) and initial beneficiaries are always the same unless you specifically request otherwise.

10. What are the rights of the surviving spouse as Trustee?

It depends on the terms of your trust. Usually in a first marriage situation, 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 A/B Trust (a/k/a "Credit Shelter Trust") has been created.

11. How is the Successor Trustee forced to abide by the wishes of the creators of the Living Trust?

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.

12. Can my Successor Trustee make changes to my Living Trust?

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

13. Does a Bank or Trust Company have to be involved?

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 the first Trustee. They then designate Successor Trustee to handle their affairs if they become disabled or die.

14. If I set up a Living Trust, is a Last Will and Testament also required?

A Last Will and Testament is not required, but is highly recommended. A Pour-Over Will is created 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 Last Will and Testament to capture such assets requires a probate proceeding.

15. What is a Pour-Over Will?

Since it is sometimes impossible to include everything you own in your Living Trust by deed, account or name, you have a simple Pour-Over Will. Unlike the normal Last Will and Testament that you may be used to, the Pour-Over Will simple directs your named Personal Representative 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, you 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.

16. Does my Last Will and Testament avoid probate?

No. Living Trusts avoid probate, Last Will and Testaments do not avoid probate if there are assets in your individual name when you die.

17. What is the difference between a funded and unfunded Trust?

A 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 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. After your assets are transferred to your Trust, your Trust is considered "funded".

18. What happens to assets that are outside my Living Trust? Since they pour over in the Trust, must they go through probate?

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.

19. Is there anything that I should not put into the Living Trust?

Yes. You should not put in your IRAs or Keogh plans or other assets that may become disqualified for tax advantaged treatment unless your attorney has specifically recommended that you do so.

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

Yes. Joint tenancy property avoids probate upon the death of the first spouse. However, when the second owner dies, all of the assets and the property must go through probate unless they are contained in a Living Trust.

21. Can I transfer my assets from my Living Trust?

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

22. Will my Living Trust protect me from law suits?

No.

23. Should my life insurance policies be placed inside the Living Trust?

No. However, your Living Trust can 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.

24. Should I put IRAs and Keoghs inside the Living Trust?

No. IRA and Keogh accounts must be owned by the individual. The Living Trust should not be the owner of your IRAs and Keoghs, as this disqualifies them from their tax favored status.

25. How are assets acquired after my Living Trust is created?

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 of the Smith Family Trust."

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

Yes. Ownership of your stocks and bonds should be changed into the name of your Living Trust in order to avoid probate.

27. Should I transfer my mortgage into the Living Trust?

No, it is not necessary. Your liabilities follow your assets. You transfer your assets into the Living Trust. Therefore, it is not necessary to transfer your liabilities into the Living Trust.

28. If I place my home in the Living Trust, will it affect my mortgage? Can the mortgage company "call" my mortgage?

No. Transferring your home into the Living Trust will have no effect on your mortgage.

29. Do I have to value my assets as they go into the Living Trust?

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.

30. Must special income tax returns be filed?

No, special Trust tax returns are not filed for a Revocable Living Trust. However, upon the death of a spouse, one-half of an A/B 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. A Trust Tax Return would have to be filed if the Trust continued to hold assets following 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.

31. Will a Living Trust reduce estate taxes?

A Living Trust may reduce estate taxes depending upon the size of your estate. An estate under \$5.43 million (2015) can be passed to your heirs without any Federal Estate Tax being payable. Each individual has a \$5.43 million Federal Estate Tax equivalent exemption.

32. Will a Living Trust change my income taxes?

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

33. If I put my home in a Living Trust, can I still deduct my mortgage interest?

Yes. A revocable Living Trust has no impact on your income taxes.

34. Do I place rental properties in my Living Trust, and, if so, how is the rent treated?

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.

35. Can I sell my assets once they are in a Living Trust?

Yes. 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.

36. Are the assets in my Living Trust available to pay for nursing home care?

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 will be protected. This is not the case.

37. How is distribution upon death different if I have a Living Trust rather than a Last Will and Testament?

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 can usually be distributed outright. 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 a person's death.

38. How should you name assets that are transferred into the Trust, or acquired by the Living Trust?

Title to property in your Living Trust should be as set out as follows: "John Doe, Trustee of the John Doe Trust dated 1/1/2017."

39. Is it difficult to change my Living Trust, and when would I want to make a change to my Living Trust?

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. The second type of change would involve amending your Trust to keep current with the 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.

40. Can I revoke my Living Trust?

Yes. The creators of a Living Trust reserve the right to revoke it at any time.

41. Can a Living Trust be contested in the same manner as a Last Will and Testament?

No, but there is a procedure for petitioning the Court to intervene in situations where a Trustee is improperly handling the Trust.

42. Can I make a gift to charity through my Living Trust?

Yes. In a Living Trust you can simply list the charity as beneficiary to receive an asset or a portion of your Estate.

43. Do I ever need to update my Living Trust?

It is recommended that you periodically review your Trust to see if there are any changes by way of amendment that you would like to make.

44. How does the Living Trust dissolve, and is there any probate at that time?

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 were titled in the Living Trust.

45. Do I need to liquidate the Living Trust assets in order to distribute the assets?

No. Liquidation of the Living Trust assets is not required. The assets may be distributed directly to the heirs without converting them into cash.