

Revocable Living Trusts

1. What is a Living Trust?

A “living trust” or “revocable living trust” is a document that is established by a “grantor” (sometimes called the “settlor”) to own and manage the grantor’s property during his lifetime by the “trustee.” Often the grantor serves as the trustee during his lifetime. After the grantor’s death, the property in the trust is distributed by the successor trustee to his beneficiaries. The successor trustee may continue to hold assets in the trust for the benefit of the grantor’s beneficiaries. Living trusts can be amended or revoked by the grantor during his lifetime and becomes irrevocable after the grantor’s death. The grantor also executes a simple Will, called a “Pour-over Will,” so that if the grantor fails to put all his assets in the trust during his lifetime, the executor of the pour-over Will is able to transfer them to the trust after his death so that all the estate assets can be kept together.

2. Do you need a living trust?

Maybe not. It depends on the types of assets you own. Some individuals may keep all their assets in joint names with their spouse, so they have no estate to distribute, but if there are beneficiaries other than the spouse, a Will or living trust might be needed. Even if all the assets are held in joint names with the spouse, there could be a problem if both spouses die without naming remainder beneficiaries. If you want some assets to go to your children, or to others, joint names might not be a wise choice. There are some situations where a trust is likely better than a Will. For example, if you have real estate in another state, a living trust may save your heirs the cost of filing an “ancillary probate” proceeding in the other state.

3. Management Trusts.

Living trusts are particularly useful for older or disabled clients who have investment assets like real estate, where it would be useful to have a successor trustee be authorized to manage the investment assets during the grantor’s disability. After the grantor dies, there would be no delays caused by having to go to court to have an executor appointed, which could take weeks or months. By putting all the assets into the living trust while the grantor is able to identify assets and explain how he wants them managed, the later management by a successor trustee will be much easier.

4. Trusts Require Changing your Habits.

The key requirement for successfully using a living trust is titling all your assets in the name of the trust. Unless you are willing to adjust your habits and keep everything in the trust’s name, from bank accounts and CD’s to rental property, autos, and brokerage accounts, you might not want to have a living trust. It is possible to hold bank accounts in your own name during your lifetime with a P.O.D. (payable on death) designation to your trust that is effective at your death, however.