

# What Is a Trust?

A trust is simply a set of instructions regarding how you would like your assets managed and then distributed to your beneficiaries. A trust is a legal document that names an individual or entity (the “trustee”) who takes legal title and management of the assets you transfer to the trust for the benefit of the persons (the “beneficiaries”) you specify in the trust document. The trustee is responsible for managing and administering the assets according to the instructions in the trust document.

Trusts are created in two different ways. A trust may be created and implemented while you are alive (an *inter vivos* or living trust), or it may be created through your will at your death (a testamentary trust).

Because a testamentary trust is created through your will, it is effective only upon your death. As with all estates passing by will, the estate is subject to probate. At the conclusion of the probate process, the assets are distributed to the trustee. In addition, because it is created at death, the testamentary trust cannot provide for the management of your assets during your lifetime. Therefore, it cannot be utilized for incapacity planning.

## *What is a living trust?*

A living trust is created during your lifetime and provides instructions for the management of your assets while you are alive, as well as for the management and distribution of your assets at your death. Typically, these types of trusts are revocable, meaning they can be amended or changed at any time before your death. This provides flexibility because you can make changes to your trust if your personal or financial goals change.

Once your living trust has been created, it is important that you re-title your assets to the trust, making the living trust the legal owner of those assets. The instructions within the living trust only govern those assets actually owned by the trust, so re-titling your assets is vital to ensuring that your instructions can be followed. When you die, the trust assets avoid probate.

## *Why should you consider creating a revocable living trust?*

Maintaining control is a fundamental reason for creating a revocable living trust. You know how you want your assets managed, but what if something happened to you and you weren't able to manage your affairs? Many of us are concerned that we might become incapacitated, and if that happens, we want to know that someone is continuing to pursue our personal and financial goals. In a living trust, you can address this issue by naming a trustee or successor trustee to step in and manage your affairs. This gives you the freedom of having your assets managed by the person or entity you choose, in the way you want them to be managed, without needing the court to intervene.

A living trust also allows you to control the distribution of your estate to your heirs. You may want to distribute your assets outright to your beneficiaries, or you may feel that it would be better to make distributions to them over a period of years, thereby allowing them to explore their own long-term planning options. A revocable living trust allows you to put the proper provisions in place to accomplish either of these goals. Your trustee can ensure that your trust assets are managed and distributed according to your wishes.

Privacy is often a key concern of our clients. Every person has different wishes regarding his or her unique personal and financial goals. Information about your life and your finances is something you typically want to keep within your family. Because living trusts avoid probate, you can maintain your privacy and dictate the time, manner, and circumstances under which your assets are distributed to your heirs.

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This material is provided with the understanding that it does not constitute legal or tax advice. You should consult with an estate planning attorney and tax professional to discuss your particular situation.

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## *If you have a living trust, do you still need a will?*

A common estate planning misconception is that if you have one tool, either a will or a trust, you do not need the other. In fact, these two legal documents often work in tandem to fully accomplish your estate planning goals. Although you may have a revocable living trust, which allows you to address lifetime planning issues, you also need a will to dispose of any assets not titled to your trust. This type of will is commonly referred to as a pour over will, because it takes the assets passing outside of the trust and transfers or “pours” them into the trust. The trust assets are then managed and distributed according to the instructions in the trust.

Although the assets passing through the will are subject to probate, many states have small estate probate proceedings which can minimize the time and expense usually associated with the process. In most situations, the majority of assets are registered in the name of the trust, and the assets passing through the pour over will are minimal.

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