

Should I Have a Living Trust?

Estate Planners of Arkansas, P.A.

Why Should I Have A Living Trust?

A Living Trust will allow you to transfer more of your property to your loved ones than you otherwise could. A *will* must go through *probate*. This will be costly and time consuming. In addition, a will provides you with no control should you become mentally or physically incapacitated. A will only takes effect *after* you die.

Will A Living Trust Avoid These Two Problems?

Yes. Because of the unique characteristics of a Living Trust, you will avoid the cost of probate and still control your property should you become incapacitated.

Let's Look At The Basics: Probate, Controlling Your Property, And Taxes

What Is Probate?

If you have a will, or like most Americans, you make no plans at all, your will must be taken to Probate Court before your property can be legally transferred to your loved ones.

Is It Expensive?

Generally, probate will cost between 5% and 10% of your gross estate. The cost is spread between attorneys, executors/administrators, court cost, and appraisal fees. Below are some sample fees:

- | • Estate Size | Cost |
|---------------|-------------------|
| • \$200,000 | \$10,000-\$20,000 |
| • \$400,000 | \$20,000-\$40,000 |
| • \$600,000 | \$30,000-\$60,000 |
| • \$800,000 | \$40,000-\$80,000 |

How Long Does Probate Take?

State law mandates that it must take at least 6 months. In reality, it will take between 1-3 years.

What If I Own Land Outside Of The State?

You will have to have a different Probate in each state where you own land.

Can I Use Joint Ownership To Avoid Probate?

Yes. But when the surviving spouse or the other joint owner dies, your property will then go through Probate. Below are some *disadvantages* of Joint Ownership:

- When you add someone's name to a deed or bank account, you have made a *gift*. You may have gift taxes to pay.

- You also give your *cost basis*. Result: When they sell the property after you die, they will pay more capital gains tax than they would have.
- They can sell your property *without your permission*.
- *Their creditors* can get to your property.
- You cannot take their name off the property without *their and their spouse's permission*.
- If one of the joint owners become *incapacitated*, you may have the court as a joint owner.

Is Probate A Private Matter?

No. Every document, including the will and inventory, is public information. This is a popular way for unscrupulous people to learn who just inherited a lot of property.

What If I Don't Do Anything?

Probate is not avoided. State law decides who gets your property. If you are married with children, your spouse gets only 1/3. The children get the other 2/3.

Can't I Avoid Probate By Giving My Property Away Before I Die?

Yes, but you may be costing your heirs thousands of dollars in capital gains tax if you give away appreciated property. In addition, you may have gift taxes to pay.

What Happens If I Become Incapacitated?

The court will step in and decide who will control your part of any property. Your will does not apply in this situation. It only takes effect after you die.

Will A Power of Attorney Avoid This Situation?

Maybe, if the financial institution or title company will accept it. You may have a legal battle on your hands.

Are There Any Other Options?

A Living Trust can be used. It is the fastest growing tool used by knowledgeable attorneys in estate planning.

What Is A Living Trust?

It is a document that allows you to *keep control* of your property without it being owned by you. A Living Trust is a type of trust that is revocable. This means that you can amend it or revoke it any time you wish. Like a will, it directs who is going to inherit your property. Unlike a will, it avoids probate, keeps the court out of your affairs if you become incapacitated, and keeps your affairs private.

Are Living Trusts New?

No, they have been in use since the 1500s.

How Does A Living Trust Avoid Probate?

When you create your Living Trust, you transfer your property into it. The property will be in your name as trustee. You don't technically own the property, but you legally control it. Since you don't technically own the property, there is no reason to go through probate.

Can I Still Use My Property Once It Is In The Trust?

Yes, you still have full control. You can sell, trade, give away, and mortgage it, just like you can now.

Do I Have To Use A Bank Or Trust Company As The Trustee?

No. If you can control your assets now, there is no reason to change this just because you put your property in a Living Trust. However, if you no longer have the ability to take care of your property or you don't have a family member you trust to carry out your wishes, then a bank as trustee may be right for you.

What Do I Transfer To The Living Trust?

You should transfer all your land, accounts, CD, insurance, stocks, bonds, and all other personal property. Some retirement plans should not be transferred. It is probably best to allow your attorney or other professional to assist you.

What If I Become Ill Or Die, Who Will Be Trustee?

Your spouse or anyone else that you trust and have chosen ahead of time can be in control of your property.

Does The Living Trust End When I Die?

After all your property has been given to your heirs, the trust will end. However, if you are leaving property to a minor, or a person who may not be able to use your property wisely, then you can keep the Living Trust in force.

How Does A Living Trust Avoid Estate Taxes? (Since 1999 new estate tax rules enact a 10 year progressive exclusion extending to \$2,000,000 per person.)

In 1999, if the net value of your estate is over \$659,000 when you die, you must pay estate taxes. In 2000, the limit is \$675,000. The beginning tax rate is 37%. Married couples can have special provisions in their Living Trust allowing them to transfer up to 1.2 million to their heirs. Below are some sample tax amounts:

• Estate Size	Estate Tax for 1999	Estate Tax for 2000
• \$ 750,000	\$ 23,800	\$ 16,900
• \$ 850,000	\$ 54,800	\$ 46,800
• \$1,250,000	\$192,800	\$183,550
• \$1,350,000	\$229,800	\$220,550

When Does The Tax Have To Be Paid?

Generally, it must be paid in cash nine months after your death.

How Much Does A Living Trust Cost?

The cost is determined by how complicated your estate plan is. However, it will not be expensive compared to the costs of court interference at incapacity and at death. Ask for an estimate before agreeing to having your Living Trust prepared.

How Long Does It Take To Have The Living Trust Prepared?

After your attorney has all the information he needs, it should take 2-3 weeks to prepare all the documents.

Should I Have An Attorney Prepare My Living Trust?

Yes, but you need to find one that has considerable experience in preparing Living Trusts. Most general practitioners are not skilled in this area.

Do I Still Need A Will If I Have A Living Trust?

Yes, but you need a special type of will called a *pour-over will*. If for some reason some of your property is not in the Living Trust, the pour-over will instructs your executor to put the property in the trust. It should not be needed, but it is there as a safety measure.

Who Should Get A Living Trust?

Almost anyone with property who wants to avoid the cost and time delays of probate, and who wants to avoid the court system should they become incapacitated.

A Review of the Benefits of Living Trust

- Avoids the cost and time delays of probate
- The Living Trust is private unlike a will which is part of the public record
- Avoids court interference should you become mentally or physically incapacitated
- Allows you to completely avoid or substantially reduce estate taxes
- Your heirs get the property you have left them in a matter of weeks rather than years
- Can be amended or revoked at any time
- Avoids all the inherent problems of Joint Ownership
- Can protect children with special needs or those who aren't financially responsible
- Prevents the courts from controlling property you have left to a minor
- Difficult to contest unlike a will
- Eliminates probate in other states in which you own land
- Inexpensive compared to the cost of Probate