

The Nance Law Firm, PLC

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Frequently Asked Questions About Living Trusts

Can I act as my own trustee?

Yes. If you are competent to handle your financial affairs now, there's no legal reason why you can't be the trustee of your own trust. In fact, most revocable living trusts have the people who created them acting as their own trustees. If you're married, you and your spouse can act as co-trustees.

What can I do with my assets once they're in my Living Trust?

If you're the trustee, you can do anything you want with the trust assets. When you set up your revocable living trust, you are transferring the title of all your assets from you as an individual to yourself as the trustee of your trust. You then must manage the property for the benefit of yourself as the beneficiary. What this means is that you will have absolute and complete control over the assets of your trust. If you want, you can spend, save, invest or even give the assets away at your discretion. There are no restrictions on what you can do with the assets in your living trust. Moreover, if you don't like the terms of the trust, you can amend it or revoke it at any time without penalty.

Will my Living Trust avoid income taxes?

No. The purpose of creating your living trust is to avoid probate, guardianship proceedings (if you become disabled), and reduce or eliminate federal estate taxes. It's not a vehicle for reducing income taxes. In fact, if you're the trustee of your living trust, you will file your income tax returns in exactly the same way you filed them before the trust existed. There are no new returns to file and no new liabilities are created.

If I transfer real estate into my Living Trust, will my property taxes go up?

No. Transfers into your revocable living trust have no effect on your property taxes.

If I'm only a part owner of property, can I transfer my share into a Living Trust?

Yes. Your share can go into the trust without changing the interests owned by others.

Can I name trustees and beneficiaries who live out of state?

Yes. There is no limitation on where your trustees or beneficiaries must reside.

Will I have to consult an attorney every time I buy new assets?

No. Once your current assets are transferred to your living trust, you take title to all new assets in the name of the trust and they will automatically be owned by your trust.

Does my Living Trust need to be registered or recorded anywhere?

No. It is a private document which is not recorded. However, if you own any interest in real estate, the new deeds showing trust ownership will be recorded by the law firm for you.

Can I sell assets owned by my Living Trust without complication?

Yes. While you're alive and competent, you can add assets to, or remove assets from, your living trust without penalty at any time.

Can I transfer real estate into my Living Trust?

Yes. In many cases, real estate should be transferred into your living trust. Otherwise, upon your death, there will be a probate in every state where you own real property. When it's owned by your living trust, there is no probate anywhere. Again, the law firm can handle the deed work for you. (However, ask your attorney about the asset protection provided by tenancies by the entirety.)

Is my Living Trust just a tax loophole that the government will close down?

No. Your living trust has been authorized by the law for centuries. The government has no interest in making you go through guardianship proceedings or a probate. Those proceedings can be a burden on the court system. Properly drafted revocable living trusts, like wills, can double the amount you and your spouse can pass tax free. At the current \$2,000,000 level, your trusts will allow you to pass \$4,000,000 estate tax free.

Can any attorney create a Living Trust?

The drafting of your trust should be done by an attorney trained in the area of tax and trust law. It's important that you seek out a law firm with experience in the creation of living trusts. After all, your trust will be the document which manages and disposes of all your hard-earned wealth.

What if I move to another state? Is my Living Trust still valid?

Yes. Your living trust is valid in all 50 states, regardless of the state where it was originally created.

Is a Living Trust a good idea for a single person?

Yes. If you're widowed, divorced, or unmarried, a living trust offers protection for your estate, as well. It is especially important if you are single to choose who will take over your affairs if you become disabled. The trust will completely eliminate probate, guardianship proceedings (if you become disabled). Neither a will nor a living trust, by itself, not reduce federal estate taxes for a single person.

Are there any major disadvantages to a Living Trust?

No. Because you have complete control of all assets in your trust, you're free to manage it any way you want. Also, because your living trust is revocable, you have the right to make any changes in it while you're alive and competent.

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