



## **Trust FAQs**

### **What is a Revocable Living Trust**

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A trust created while a person is still alive is called a Living Trust. The Living Trust is created when one person, a Grantor, places property into the trust. The property is held by a Trustee in the name of the trust and managed by the Trustee for the benefit of a Beneficiary. You (the Grantor) can be the Trustee and Beneficiary of your own Living Trust, and retain management control over your own property.

#### **What are the benefits of a Revocable Living Trust over a Last Will (probate court)?**

Probate court will mean additional expenses, delay, and loss of privacy. A Revocable Living Trust should help you avoid many of the expenses and delay of Probate Court. Your beneficiaries will usually have unrestricted and uninterrupted access to income and assets after your death as long as you do not have significant unresolved debts. Note also that Probate Court is a public record with a resulting loss of privacy. In addition a Revocable Living Trust can be set up to smoothly manage your affairs in case of temporary disability.

#### **What are the drawbacks of a Revocable Living Trust?**

A Living Trust can be more trouble to set up and maintain or modify. Title to all property must be individually transferred to the trust including land, accounts and securities. You will probably still need a simple Last Will to distribute any remaining possessions or cash not contained in your Living Trust.

## **How does a Revocable Living Trust work?**

When a trust is created, a Trustee must be appointed to manage the trust. With a Revocable Living Trust, you (the Grantor) are almost always the Trustee as well as the initial Beneficiary as long as you are alive. When you (the Grantor/Trustee) die, then the duties and obligations of managing the trust shift to the Successor Trustee. At the time of your death the trust is no longer revocable and the terms of the trust can no longer be changed.

## **If I set up a Living Trust can I be my own trustee?**

Yes. In fact it is very common for a grantor to act as their own trustee. One of the benefits of a Living Trust is that the grantor can retain control over their own property for the rest of their lives. You must however designate a Successor Trustee (Credit Union Trust) who will take over management of your Living Trust after you die.

## **So if I create a Living Trust then I don't have to worry about probate?**

Not true. Any property that you do not transfer to your trust will still be subject to probate. You must ensure that you have transferred as much property as possible into your Living Trust including bank accounts, investment accounts, real estate, and business interests.

## **Are there other ways to avoid probate?**

There are other ways to avoid the expense and delay of probate. By holding property jointly (with rights of survivorship) with your spouse or partner the surviving spouse or partner simply assumes full title to joint property on your death. In addition, in the case of life insurance policies and retirement accounts,

assets may be directly transferred without probate by naming specific beneficiaries in the policy. You may also avoid probate by simply making a gift of property before your death. However, you cannot do this for the purpose of hiding assets or avoiding debts as a court may find this to be a fraudulent conveyance and may reverse or void the gift.

## **Will beneficiaries have instant access to my assets and property after my death?**

No. The trustee must first ensure that all legally enforceable debts and obligations of the grantor are resolved. Only then can the trustees make a final distribution of the trust assets and property. This process will take 4 - 6 months at a minimum and may take up to one year.

## **Is a Testamentary Trust the same as a Living Trust?**

No. A Testamentary Trust is created by a Last Will and Testament on the death of the grantor. A Living Trust is created during the lifetime of the grantor and therefore can often be managed by the grantor acting as trustee. A Living Trust becomes effective as soon as it is created. A Testamentary Trust is created on the death of the grantor.

## **What is the difference between a revocable and irrevocable trust?**

An Irrevocable Trust is permanent and cannot be revoked or amended even by the grantor and the property assigned to the Irrevocable Trust cannot be returned to the grantor. A Revocable Living Trust can be amended or revoked by the grantor during the lifetime of the grantor. Once a grantor dies then a Revocable Trust becomes an Irrevocable Trust and a successor trustee will assume management of the trust. An Irrevocable Trust may have tax advantages over a Revocable Trust where the Irrevocable Trust will be treated as a separate taxable entity however gifts made to an Irrevocable Trust may still be included in determining the value of an estate for estate tax purposes.

## **What happens if I don't have a Last Will or a Living Trust?**

If you do not have either a Last Will or Living Trust then upon your death the probate court in the state where you die will apply standard rules of intestacy to distribute your property and assets among your surviving spouse and family. These standard rules may not provide the best result for the requirements of your family. In addition, a court may select a guardian for any minor children and that guardian may get control of the property and assets that belong to that minor child.

## **Is a Revocable Living Trust right for me?**

### **How do I know I need a Living Trust?**

Whether a Living Trust is the best fit for you depends on your personal circumstance. If you are young and healthy and have only modest assets, it may be that a Last Will is an adequate solution for your needs. You must also find an individual or corporate trustee like Credit Union Trust that you trust to act as trustee over your property for a potentially long term commitment. If you are uncertain about what is the best solution for your situation then you may wish to obtain qualified legal advice.

### **I am married and our property is jointly held. Do I need a Living Trust?**

Where property is jointly held between husband and wife, probate will not usually be necessary for those assets because title to those assets will automatically transfer to the surviving spouse. However an older couple may wish to create a Revocable Living Trust with both spouses acting as co-grantors and co-trustees. Of course if you are concerned about privacy then you may wish to create a Living Trust anyway. If you are uncertain about what is the best solution for your situation then contact Credit Union Trust.

## **I am young-ish and have only modest assets. Do I need a Living Trust?**

In this case a Last Will is probably adequate. If you are young but have substantial assets then you may not want to take a chance, in that case you may still want to create a Living Trust to ensure that probate costs are minimized in the event of your untimely death. Of course if you are concerned about privacy then you may wish to create a Living Trust anyway. If you are uncertain about what is the best solution for your situation contact Credit Union Trust.

## **I think estate taxes may have to be paid on my estate. Will a Living Trust help me reduce my taxes?**

If the fair market value of your estate is greater than the available unified credit (currently \$11,000,000) then your estate will have to pay estate tax on the amount greater than the credit. For example, if the fair market value of your estate is \$14,000,000 then federal estate tax would be due on \$3,000,000. Giving away part of the value of your estate to a Revocable Living Trust does NOT help you reduce the fair market value of your estate. A Living Trust is not a tax loophole. If you are confused by any of this or if the fair market value of your estate is greater than the available credit (currently \$11,000,000) then you should seek qualified legal advice. Credit Union Trust can provide you with the name of a qualified estate planning attorney in your neighborhood.

## **Trustees**

### **What are the advantages of a Corporate Trustee?**

A Corporate Trustee like Credit Union Trust solves the problem of losing a trustee because of death, incapacity or resignation of an individual trustee. This can be especially helpful if the trust will be required for an extended period. If you are having trouble deciding on a reliable trustee then a Corporate Trustee can be an option. A Corporate Trustee will be more experienced in money management and administering trusts than a family member.

# **Taxes**

## **Does a Living Trust help avoid taxes?**

No. A Revocable Living Trust is not a loop-hole in the tax law. A well-structured Living Trust is no different than a well-structured Last Will for minimizing taxes. Income earned by property in the Living Trust will be taxable annually as income tax in the name and social security number of the grantor (That's you). In addition, on your death, estate taxes may also be payable out of the assets of your Living Trust. In fact, upon your death, your Successor Trustee is obligated to provide notice of the existence of your Living Trust. If the assets controlled by your Last Will are insufficient to pay your outstanding debts and obligations, then the personal representative of your Last Will is entitled to receive payment out of your Living Trust to satisfy any of your outstanding debts and obligations.

## **Who pays taxes on the income earned by the trust?**

The grantor retains title to the trust property during his or her lifetime. The grantor therefore is responsible for paying tax on any income earned by the trust while the grantor is alive.

# **Protection against creditors**

## **Does a Living Trust protect my assets against creditors?**

No. A Revocable Living Trust is NOT a loop-hole to help you avoid creditors. A Living Trust does not protect your assets from a legally enforceable debt. While you are still alive or after you are dead, a legally enforceable debt can be resolved out of the assets of your Living Trust.

# Completed Document

## What do I do now?

When your Living Trust is signed, witnessed and notarized then you must transfer property into the trust. You must transfer real property (real estate) to the trust by a properly executed deed. Personal property (cars, jewelry, furniture) is transferred by a properly executed bill of sale. For bank accounts, bonds, stock certificates and other intangible assets you must talk to your account representative for the appropriate title transfer forms.

## Definitions

### What is probate?

Probate is a court supervised process that oversees the orderly distribution of assets and property left by the deceased. This includes the payment of all legal debts of the deceased and the subsequent distribution of the remaining estate assets among beneficiaries. Remember: A Revocable Living Trust is NOT a loophole to help you avoid creditors. Note also that all your property does not have to go through probate. Any property that is jointly owned with rights of survivorship, such as your house which is usually jointly owned with your spouse, will automatically pass to the surviving joint owner. Life insurance policies, annuities, and retirement plans all with a valid designated beneficiary would transfer directly to the beneficiary and would not go through probate.

### What is a Grantor?

A Grantor (also known as settler or trustor) is the person who creates the trust and contributes most or all of the assets or property to the trust.

## **What is a Trustee?**

A trustee is the person or persons who actively manage the trust property for the benefit of the beneficiaries. The trustees are allowed to manage the trust property substantially as if it was their own however actual title to the property would remain in the name of the grantor while the grantor is still alive otherwise title to the property is held in the name of the trust. The trustee is usually paid a fee for managing the trust property.

## **What is a Successor Trustee?**

A successor trustee will be the person or persons who take over the management of the trust upon the death of the grantor or if the grantor becomes incapacitated and is unable to manage their own affairs. During the lifetime of the grantor the Living Trust may be managed by the grantor himself, however a trustee (the successor trustee) must be identified who will take over the management of the trust after the death of the grantor.

## **What is a Corporate Trustee?**

A corporate trustee is a company such as Credit Union Trust that provides professional services for the management of trusts. A corporate trustee is often more objective and has more investment experience than a family member however you may appoint both a corporate trustee as well as an individual person to act jointly to manage your trust. You can expect a corporate trustee to charge a fee for their services. Despite the extra cost, a corporate trustee has some distinct advantages. A corporate trustee is experienced in investment management and will continue to act indefinitely whereas a person acting as trustee may wish to quit eventually or may become sick or incapacitated or die.



## **What is a Beneficiary?**

The beneficiary is the person or persons for whom the trust is for. After the death of the grantor, the trustee will divide the trust property among the beneficiaries in accordance with the terms of the trust.

## **What is a Pour-Over Will?**

A Pour-Over Will is used to transfer all remaining property of the estate into the Living Trust. This simply ensures that all remaining property is transferred into the trust. The Pour-Over Will must still go through probate before property can be transferred to the trust.

## **Miscellaneous**

### **If I have a Living Trust do I also need a Last Will?**

Yes. You should still make a Last Will to distribute all the assets and property not held in your Living Trust. It is unlikely that you will be able to transfer all property into your Living Trust. Cars, personal property, checking accounts, debts owed to you, or even an outstanding income tax refund could all be sitting outside your Living Trust when you die. Whatever is left of your estate including all property that was not transferred to your Living Trust will be distributed through your Last Will. But if you minimize the amount of property held outside your Living Trust you should be able to minimize the costs and delay of probate and maximize your privacy.

### **What happens if a Grantor takes up residence in a different state?**

As long as the original Living Trust was properly created according to the requirements in the original jurisdiction, it will be accepted as valid in other states.

## **How should I describe my property?**

Provide an accurate description of the assets you wish to transfer to your Living Trust. Include account numbers and serial numbers as well as a thorough description where possible. Include a proper legal description for any real estate to be transferred.

## **Who do I contact about Credit Union Trust?**

**If you have any questions or would like to discuss your specific situation, please give us a call at (810) 715-3542.**