

Living Trusts 101: Funding and Managing a Living Trust

A living trust, is one of the most flexible options available for estate planning. Once the creator has signed the trust document, though, what comes next? Read on for some of the basics of funding and managing living trusts.

What is a living trust?

A Living Trust is a legal document that allows its creator to place assets in trust and name themselves as the trustee with full power to manage the assets during their lifetime. This means the trustee can continue to sell, gift, or otherwise handle the property just as she would have before the creation of the trust; the only difference is that when there is a trust, the transactions are made in the name of the trustee (Jane Doe Living Trust) and not as the individual (Jane Doe).

When the creator of the trust dies, the assets in the trust are passed to a successor trustee of the creator's choice without involving probate, the court-directed process of distributing assets and paying debts of the deceased. The assets may then be distributed to any named beneficiaries; note that the assets in a living trust may still be subject to creditors and applicable estate taxes.

How is a living trust funded?

A living trust becomes valid only after the creator executes the necessary documents and then "funds" the trust by transferring assets into it. The specific process for moving assets into the trust by the "grantor" depends on the type of property involved.

The two primary ways to move assets into a living trust are as follows:

- **Assigning Ownership Rights:** Where the grantor owns but does not hold legal title in assets such as works of art, antiques, jewelry, promissory notes, intellectual property, and certain business interests, these can be moved into the trust by assigning ownership rights from the individual to the trustee.
- **Changing Title:** Where the grantor holds title in assets such as real estate, bank accounts, investment and brokerage accounts, and stock and bond certificates, these may be moved into the trust by changing the name of the owner from the individual to the trustee.

Note that the creator of the trust may choose to list the trust or trustee as a beneficiary for other assets such as life insurance, pensions, and retirement accounts, but this technically does not move those assets into the trust. To be clear, however, there is no obligation for the creator of the trust to change beneficiaries either. It is advisable to consult with a tax professional about the tax impact of distributing these types of assets to a trust upon your death.

Note as well that not all assets must, should, or even can be placed in a living trust; accordingly, how a living trust is funded can vary greatly by individual circumstances. Accordingly, personalized legal advice is highly recommended.

Is a living trust forever?

While a living trust may continue as originally written until the creator's death, it is revocable, which means the creator can change provisions, add or remove assets, make other modifications, and even revoke the trust entirely during their lifetime.

Is a living trust all that is needed to effectively manage an estate?

Generally a pour-over will is recommended for anyone with a living trust. Aside from offering the opportunity to name a guardian for any minor children, a will will also “catch” any assets that have not made it into the trust for any reason. Otherwise, if an asset is inadvertently excluded from the trust and is also not included in a will, it would be subject to the state laws of intestacy—and the asset may or may not end up in the hands of a desired beneficiary.

If you're unsure whether a living trust is the best method to plan your estate, be sure to contact our office we will explain the pros and cons of each