

complete control over their assets during their lifetime, while others are comfortable allowing someone else to manage their assets.

An attorney can assist in reviewing your situation to determine what is best for you. A living trust is just one part of a complete estate plan. Like wills or other legal documents, trusts should be prepared by a qualified attorney. It's also essential to regularly review your trust to ensure it aligns with changes in your family, finances, or the law.

The Role of an Elder Law Attorney

One of the most important benefits of a living trust is that it can serve as an alternative to conservatorship for individuals who may become unable to manage their own financial affairs due to a disability. By carefully drafting a trust, you can ensure your assets are managed according to your preferences by a trustee of your choosing, avoiding the need for court intervention.

Elder law attorneys are particularly sensitive to the needs of older individuals and people with disabilities. They can provide expert advice on how to use trusts to manage assets, protect autonomy, and ensure long-term financial security. Elder law attorneys also offer guidance on broader estate planning tools, ensuring you have the right legal documents in place to protect your interests.

For personalized advice and a complete estate planning strategy, consulting an elder law attorney is essential. They can help ensure your assets are managed properly, your wishes are respected, and your family is protected.

National Academy of Elder Law Attorneys

The National Academy of Elder Law Attorneys (NAELA) is a professional association of more than 4,000 attorneys dedicated to improving the quality of legal services provided to older adults and people with disabilities.

The information in this brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified elder law attorney.

For more information about NAELA and a directory of NAELA attorneys in your area, go to www.NAELA.org.



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The Law and Aging

Understanding Living Trusts



What Is a Living Trust?

A living trust is a legal document that you create while you're alive, where you (known as the settlor or trustmaker) transfer ownership of your assets — such as your home, investments, or bank accounts — into the trust. In this document you appoint a trustee — which could be yourself, another person, or a financial institution — who will manage those assets according to your instructions.

Benefits of a Living Trust

A living trust can provide several advantages, depending on your needs.

- **Asset Management During Incapacity:** A living trust allows for the management of your assets during your lifetime. It typically includes a plan for someone else to take over management if you become incapacitated, potentially avoiding the need for a court-appointed guardian or conservator.
- **Control Over Asset Management:** You can dictate how your assets are managed by providing clear, written instructions in the trust.
- **Long-Term Care Planning:** In some cases, with careful planning, a trust can help manage the costs of long-term care related to catastrophic illnesses.
- **Avoiding Probate:** In states where probate is a lengthy and expensive process, a living trust may allow you to bypass the court system altogether. By transferring your assets into the trust, they can be distributed according to your wishes after death without needing

probate, as long as all non-retirement assets — like a 401(k) or IRA — are included in the trust.

- **Avoiding Out-of-State Probate:** If you own real estate or minerals in another state, placing your assets in a trust can help you avoid probate proceedings in that state.

Important Considerations

Living trusts are not just for the wealthy and not everybody needs one. There are different types of trusts designed for different purposes. Here are some important points to understand.

Types of Trusts

- **Revocable Trusts:** These trusts can be changed or terminated by the person who created them. Income from assets in a revocable trust is still taxable. Revocable trusts do not provide tax savings or asset protection.
- **Irrevocable Trusts:** Once created, these trusts generally cannot be modified or revoked. However, they may offer special tax advantages, especially for estate planning purposes and asset protection. Some irrevocable trusts can be amended for certain purposes if drafted carefully.
- **Irrevocable Life Insurance Trusts:** These trusts can provide significant estate tax savings for individuals with large life insurance policies, but they require detailed planning.
- **Supplemental Needs Trusts or Special Needs Trusts:** These trusts are designed to manage assets for someone receiving public benefits, such as Medicaid, without affecting their

eligibility for those benefits. They can provide funds for items not covered by public benefits.

Immediate or Standby Trust

You can transfer most of your non-retirement assets into the trust immediately, or you can establish a standby trust which takes effect only if you become disabled. In this case, someone must have the authority to transfer the assets into the trust, usually through a durable power of attorney with specific authorization to do so.

Trusts and State Law

Trusts are governed by state law, so they must be written to meet your individual needs and comply with local laws.

Choosing a Trustee

Most people serve as the initial trustee of their own living trust, but you must choose a successor trustee to manage the trust if you become incapacitated or pass away. This successor could be a trusted family member, friend, or financial institution. An attorney can provide valuable guidance in selecting the appropriate trustee.

Where to Get Help

Not everyone needs a living trust, but for many it can provide security for managing assets and avoid the need for probate. Be cautious of free seminars offering trusts, as they often promote generic “one-size-fits-all” trusts that may not be suitable for your state's laws or your specific needs.

Before deciding whether to create a living trust, it's important to analyze your assets, the types of property you own, and how you want them to be managed. Some people prefer to maintain