

LIVING TRUST BASICS*

	Estate Plan With Trust	Estate Plan Without Living Trust
Documents	Trust document (separate from Will) creates trust during lifetime; combined with “Pour-Over” Will naming trust as beneficiary.	Trusts under Will created after death--only through probate.
Parties	Client creates trust as “SETTLOR” (sometimes called “Grantor”) and typically administers trust as Initial Trustee; Trustee holds title to trust assets.	Creator of Will (“TESTATOR”) names Executor, also known as “Personal Representative.”
Control	Trust is revocable and amendable; Settlor retains full control and enjoyment of trust assets as long as competent.	Testator retains full control of assets; no change of asset titles until after death.
Beneficiaries	Named in Trust.	Named in Will.
Representatives	SUCCESSOR TRUSTEE designated in trust document handles administration of trust assets after death or incapacity of Settlor / Initial Trustee—Successor can be individual or corporation, such as bank, with authority to conduct trust operations; Pour-Over Will names Executor and Alternate Executor.	Executor or Alternate Executor named in Will and/or appointed by court handles complete administration of estate; no Trustee unless Will has trust provisions.
Probate	No court involvement at death of Settlor if all assets otherwise subject to administration under Will have been titled in the trust, but Trustee can invoke assistance of the court if necessary to resolve claims or obtain interpretation of trust provisions; Executor named in Will has no duties if no probate.	Administration of assets through Will requires court appointment of Executor, filing of various documents with county court and court supervision.
Privacy	Listing of assets and beneficiaries in court file avoided if no probate.	Probate requires filing of inventory with detailed listing of assets and beneficiaries in court file--which is open to public inspection.
Incapacity	If Settlor / Initial Trustee becomes incompetent, Successor Trustee has comprehensive powers of management and administers assets for benefit of Settlor while Settlor is living; death of Settlor does not terminate powers of Trustee.	Management assistance can be provided by agent under power of attorney or court-appointed conservator, but both options have considerable disadvantage as compared to trust management; authority of agent under power of attorney terminates at death of Testator.

* This is a general guide to revocable “living” trusts (without coverage of all technical subjects) comparing advantages and disadvantages to estate plan without living trust.

Income Taxes	Living Trust not taxed separately during life of Settlor; trust income and deduction items reported directly on return of Settlor; after death of Settlor, special election permits use by trust of some tax advantages allowed to an estate; in general no income tax advantages or disadvantages.	After death of Settlor, the estate is a separate taxable entity, usually required to file tax returns for tax year(s) before completion of beneficiary distributions.
Death Taxes	Living Trust does not avoid or lessen estate or inheritance taxes; Trustee files any required death tax returns if Executor has not been appointed by court.	Executor files any required death tax returns.
Asset Titles	If probate avoidance desired, assets titled in name of Settlor prior to creation of trust are re-titled in name of trust, so that they can be administered without court involvement by Successor Trustee after death of Settlor; titling of assets with separate beneficiary designations, such as life insurance or retirement plan accounts, in trust may not be necessary or desirable.	No changes in titles unless client chooses alternative methods of probate avoidance, such as joint tenancy ownership or transfer-on-death designations for financial accounts; such alternatives often have significant disadvantages, as compared to ownership by living trust.
Personal Effects	Can be titled in trust by assignment; trust can have provisions for this property; separate document created by Settlor can name beneficiaries for specific items.	Subject to administration in probate; separate document can name beneficiaries for specific items.
Review of Plan	Periodic review of asset titles is desirable to assure probate avoidance.	Change of circumstances may present stronger reasons for use of living trust or options to avoid probate without use of trust.
Costs	Expense of creating trust depends upon complexity of provisions and extent of assets to be re-titled--typically \$2,000-5,000 for attorney fees (client assistance with asset titling can reduce fees); if probate avoided, no court costs or legal fees for court filings, but Trustee may charge trustee fees.	Expense of creating living trust avoided, but probate of Will generates lawyer fees and court costs; Executor can also charge fees; Trustee of any trust created under Will can receive fees.