REVOCABLE LIVING TRUST

There are several different kinds of trusts.

An *irrevocable trust* is frequently used in tax planning. After it has been set up, you usually cannot change it or remove assets that have been transferred into it.

A *testamentary* trust is created after you die by a provision in your will. It can be used in tax planning or to manage assets for minors or other beneficiaries. However, as we explained earlier, a testamentary trust *does not avoid probate* and it *provides no protection* if you become incapacitated because it is part of your will.

The kind of trust we are discussing in this booklet is called a *revocable living trust*. (To keep things simple, we will often refer to it from now on as a *Living Trust*.)

What is a revocable living trust?

A revocable living trust is a legal document that looks a lot like a will. It includes your instructions for what you want to happen to your assets after you die, just like a will does. But, unlike a will, a living trust avoids probate at death. It also prevents the court from controlling your assets if you become incapacitated. And it gives you (not the courts) control of the assets you leave to your minor children and/or grandchildren.

How does a living trust avoid probate and prevent court control at incapacity?

When you set up a living trust, you transfer assets from your individual name to the name of your trust, which you control-such as from "Steve and Joan Jones, husband and wife" to "Steve and Joan Jones, Trustees under trust dated (month/day/year of trust)."

Technically, you no longer own anything, so there is nothing for the courts to control when you die or if you become incapacitated. The concept is very simple, but this is what keeps you and your family out of the courts-even if you own assets in other states.

Do I lose control of the assets I put into my living trust?

Not at all. You keep full control. As trustee of your trust, you can do everything you could do before including buying, selling, investing, etc. You can make changes or even cancel your trust (that's why it's called a revocable living trust). In fact, the Internal Revenue Service considers putting assets in a revocable living trust to be a "non-event" because you can take them out at any time. Nothing changes but the names on the titles. And, as you'll see in the next few pages, you'll actually have more control with your assets in a living trust than you do now.

How does a living trust work?

When you set up a living trust, you become the grantor (or trustor)-the person whose trust it is. If you are married, you and your spouse can be co-grantors (co-trustors), or you can be grantors of

your own separate Trusts. Only you-the grantor (trustor) can make changes to your trust. That's how you keep control.



You will need to name someone-called the trustee to "manage" the assets in your trust. You can be your own trustee. If you are married, you and your spouse can be co-trustees. And as long as you are a trustee of your trust, you file the same income tax returns as you do now, using your own social security number.

Can I name someone else as my trustee?

Yes. You could name an adult son or daughter, another relative, or a good friend to be your trustee or co-trustee. You could also name a corporate trustee that's a bank or trust company that manages trust assets.

However, even if you name someone else as trustee, you're still in control. As long as you are competent, you can replace your trustee at any time if you don't like the job they're doing for you because you are the grantor of your trust.

Why would I consider a corporate trustee?

Many people select a corporate trustee as trustee or co-trustee if they don't have the time, ability or desire to manage their own trusts. For example, you and your spouse may be in declining health. You may be a widow or widower who doesn't have much experience managing investments. Maybe you want to do other things with your time now, like travel. Or perhaps you just don't want the worry and headaches of managing your assets anymore.

Corporate trustees (professionals) are in the business of managing trusts-they are reliable, objective, government regulated, experienced investment managers, and by law must follow the instructions in your trust. Unlike an individual, they won't die, become ill, or move away. They do charge for their services, but their fees are usually reasonable and are often more than offset by their investment performance.

What happens if I become incapacitated?

If you have named someone else as your trustee or to be a co-trustee with you (for example, your spouse or a corporate trustee), they will continue to manage your financial affairs according to your trust's instructions for as long as necessary. If you recover, you automatically resume control. If you are the only trustee or if your co-trustee is unable to act (for example, if your spouse is also incapacitated or has died), the successor trustee(s) you personally selected will step in and act for you.

Who decides if I am incapacitated?

Actually, you can. Your living trust can include a provision that lets you specify who has the authority to determine your ability to manage your affairs. You can even specify how many and what kinds of doctors you want to examine you.

What happens when I die?

Your trustee or co-trustee essentially has the same duties as an executor. He/she collects any income or benefits, pays your remaining debts, sees that tax returns are filed, and distributes assets according to your trust's instructions. If estate tax planning is involved, he/she will work with your team of professionals to make sure everything is done properly. All of this is handled efficiently and privately, with no court interference. Again, your successor trustee will perform these duties if you are the only trustee or if your co-trustee is unable to act.

Who can be successor trustees?

Successor trustees can be individuals (your adult children, other relatives or trusted friends) and/or a corporate trustee. If you choose an individual, you should name more than one in case your first choice is unavailable or unable to act. You can name two or more to act together.

How do I know my successor trustee will do what I want?

A trust is a binding legal contract, and trustees are fiduciaries-by law, they have a legal duty to follow your trust's instructions and act in a "prudent" (careful or wise) manner at all times for the benefit of your beneficiaries. If your successor trustee were to abuse his/her duties by not following the instructions in your living trust, he/she could be held legally liable.

Choose your successor trustee(s) carefully-they have a lot of responsibility. Consider how busy your candidates are with their own affairs, how far away they live and how capable they are. Talk to them and see if they would be willing to serve. If you have any doubts or concerns, you should probably consider a corporate trustee.

By the way, a successor trustee has no control or say in your affairs until he/she steps in (in your-the trustee’s shoes) at your incapacity or death. And, of course, you can change your successor trustee(s) at any time-until you become incapacitated or die.

Who can be my beneficiaries?
These are the people and/or organizations who will receive your assets after you die. Most people leave their assets to relatives, but you can leave them to anyone or to any organization(s) you wish. Many people like to include a favorite charity or religious/fraternal organization.

When will my beneficiaries receive their inheritances?
With a living trust, that's up to you. Without one, it would be up to the courts. One of the most powerful benefits of a trust is that you can keep control over who will receive your assets, and when and how they will receive them. (This is one area where you definitely have more control when your assets are in a trust.)

Since the court is not involved, assets can be distributed as soon as your successor trustee can wrap up your final affairs. Or assets can stay in your trust, managed by the person or corporate trustee you have chosen, until your beneficiaries reach the age(s) you want them to inherit. For example, some parents prefer to give children or grandchildren their inheritances in installments (or some certain so they have more than one opportunity to use the money wisely.

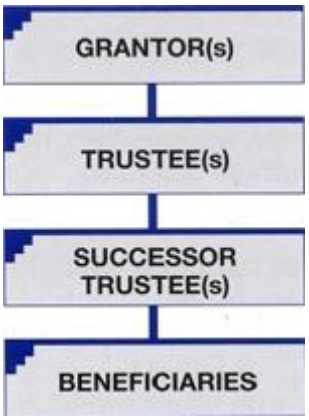
Your Living Trust Team

Grantor(s): Persons) creating the trust-you (and your spouse). Only a grantor can change or cancel his/her trust. (Also called settlor, trustor or donor.)

Trustee(s): Manages the assets in your trust now. Usually you (and your spouse) and/or a corporate trustee (bank or trust company).

Successor Trustee(s): Will step in and manage the assets in your trust for as long as necessary if you (and your spouse) become incapacitated. At your death(s), your successor trustee will distribute your assets (or keep them in your trust) according to your instructions. Successor trustees can be adult children, trusted friends and/or a corporate trustee.

Beneficiaries: Persons and/or organizations who will receive the assets in your trust when you (and your spouse) die.



Your trust can continue longer to provide for a loved one with special needs without disturbing valuable government benefits. Or if you are concerned about a beneficiary's spending habits, you could have the trustee provide periodic income and keep the rest of his or her inheritance in the

trust. You could also supplement the income of a child who wants to teach or do other low-paying but important community service work.

Even if you feel that your beneficiary would handle the inheritance well, you may want to keep the assets in the trust to protect them from creditors, current spouses, ex-spouses, potential lawsuits and future death taxes. Your trustee can make distributions to the beneficiary as needed, but the assets that remain in the trust would be protected from these creditors and predators and, if invested well, could even help provide for future generations.

Most people would like to leave their children or grandchildren enough so they can do anything they want, but not so much that they do nothing. With a trust, you can do that and more.

How does a living trust let me control assets for minor children?

As long as the assets stay in a trust, you prevent the court from taking control of the inheritance at your death or incapacity.

If you have minor children, you will name a guardian to raise them if something happens to you. You will also name a trustee to manage the assets and provide money for expenses until each child reaches the age(s) you want him or her to inherit. The trustee can be one or more individuals, including the person you name as guardian, and/or a corporate trustee. (Naming one person as trustee and guardian may seem convenient. But the person you want to raise your kids may not be your best choice to handle the money.) The court still has the right to approve your choice of guardian, but it cannot control the inheritance. The trustee can automatically step in at your death or incapacity and follow your instructions, with no court interference.

If you are divorced or separated: Since you control who will manage the assets, an irresponsible "ex" may have no incentive to even get involved. And if the other natural parent isn't interested, the court may go along with your choice for guardian.

Grandparents: You can name a trustee (perhaps one of the child's parents or a corporate trustee) to manage the assets until each child reaches the age(s) you want him/her to receive the inheritance. (You may also want to inform their parents about a living trust to prevent court control if they were to experience incapacity or an early death.)

Does a living trust reduce my taxes?

A revocable living trust has no effect on your income taxes. Income taxes must be paid every year you receive income-even the year in which you die. However, if you are married, a living trust can reduce or, depending on the size of your estate, even eliminate estate taxes.

What are estate taxes and who has to pay them?

Estate taxes are different from, and in addition to, income taxes and probate fees. Depending on how much you own when you die, estate taxes may have to be paid before your assets can be fully distributed to your beneficiaries. Federal estate taxes are expensive-the rate is 45% in 2008-and they must be paid in cash, usually within nine months after you die. (Some states also have a death/inheritance tax, which is in addition to the Federal estate tax.) Because few estates have this kind of cash, assets often have to be liquidated to pay these taxes.

Your estate will have to pay estate taxes if its net value when you die is more than the "exempt" amount set by Congress at that time. This chart shows the current schedule for the amount of net assets you can own at your death and pay no estate taxes. This is often called the estate tax "exemption."

Year of Death	Estate Tax "Exemption"
2008	$2 million
2009	$3.5 million
2010	N/A (repealed)
2011 and thereafter	$1 million

How is the net value of my estate determined?

To determine the current net value of your estate, add your assets, then subtract your debts. Include your home, business interests, bank accounts, investments, personal property, IRAs, retirement plans and death benefits from your life insurance. Keep in mind that estate taxes are based on the values when you die; your assets may appreciate in value between now and then.

What can I do about estate taxes?

If you plan ahead, you can reduce or eliminate estate taxes. For example, if you are married, you can make sure you and your spouse use both your estate tax exemptions. Unfortunately, most married couples leave everything to each other, which can be a tax trap. Here's why.

Let's say Joe and Mary have a combined net estate of $4 million. Joe dies in 2008 and leaves everything to his wife, Mary. Because she is a U.S. citizen, Bob can leave her an unlimited amount and pay no estate tax when he dies. When Mary dies later that same year, her estate of $4 million uses her $2 million exemption. The tax bill on the remaining $2 million? $900,000! The problem with leaving everything to your spouse is you waste an exemption.

If Joe and Mary plan ahead, they can use both their exemptions and pay no estate taxes. A tax-planning provision in their living trust splits their $4 million estate into two trusts of $2 million each. When Joe dies, his trust uses his $2 million exemption. When Mary dies, her trust uses her $2 million exemption. This reduces their taxable estate to $0, so the full $4 million can go to their beneficiaries. (Depending on where you live, your attorney may recommend starting with two separate trusts instead of one common trust as explained here.)

As this chart shows, if you are married, planning ahead with a living trust can save thousands of dollars in estate taxes and probate fees. This same estate tax planning can also be done in a will, but you would not avoid probate or enjoy the other benefits of a living trust.

	Simple Will			**Living Trust with Tax Planning**		
Estate Size	Estate Taxes*	Probate Fees**	Total	Estate Taxes	Probate Fees	Total
$ 500,000	$ 0	$ 15,000	$ 15,000	$ 0	$ 0	$ 0

1,000,000	0	30,000	30,000	0	0	0
1,500,000	0	45,000	45,000	0	0	0
2,000,000	0	60,000	60,000	0	0	0
4,000,000	900,000	120,000	1,020,000	0	0	0

**In 2007 and 2008 **estimated at 3% Fees for documents and/or estate tax return not included.*

What if I'm not married?
This planning feature is only available to married couples. However, an experienced estate planning attorney will be able to recommend other options to help you save estate taxes.

What's involved in setting up a living trust?
You make the basic planning decisions inventory your assets, decide who will be your trustee, successor trustees, and beneficiaries. The legal document is then prepared from your decisions. After you've approved and signed the document, you transfer your assets to your living trust. This is called "funding" your trust.

Do I need to fund my living trust now?
If you want the control we've been talking about, you must fund your living trust now-while you are able. Your living trust can only control the assets that have been transferred into it.

Is it hard to put assets into my living trust?
No, and your attorney, trust officer, financial adviser and insurance agent can help. You'll need to change titles on real estate (local and out-of-state) and other assets with formal titles-savings, stocks, CDs, other investments, insurance, safe deposit box, etc. In most states, changing titles will not trigger a revaluation of your real estate or disturb your mortgage in any way. Most living trusts include jewelry, clothing, home furnishings, art, and other personal property that do not have formal titles.

You'll also need to change beneficiary designations on some assets (like insurance) to your living trust so the court cannot control them if a beneficiary is incapacitated or no longer living when you die. In these cases, your trust will receive the proceeds and the funds can be used to care for your incapacitated beneficiary or can be distributed according to your instructions.

Tax-deferred savings plans, like IRAs, are exceptions. There may be valid tax reasons for you to name your spouse as first beneficiary and your trust as second beneficiary. You'll want to discuss your options with your tax adviser.

Doesn't it take a lot of time to change titles and beneficiary designations?
It will take some time. But you can do it now, or you can pay the courts and attorneys to do it for you later when you cannot.

Think about this for just a minute. Who knows better than you what you own and where all the paperwork is located? And if there is a problem with a title, wouldn't it be better for you to straighten it out now-than for your family (and attorneys) to try to resolve it without your help?

Benefits of a Living Trust

- Avoids probate at death
- Avoids multiple probates if you own assets in more than one state
- Prevents court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Quicker distribution of assets to beneficiaries
- Assets can remain in trust until beneficiaries reach the age(s) you want them to inherit
- Can reduce or eliminate estate taxes
- Inexpensive, easy to set up and maintain
- Can be changed or cancelled at any time until your incapacity or death
- Difficult to contest
- Prevents court from controlling finances when minor children inherit
- Can protect dependents with special needs
- Prevents unintentional disinheriting and other problems of joint ownership
- Professional asset management if you use a corporate trustee
- Peace of mind

One of the benefits of a living trust is that it organizes all your assets under one plan, with one set of instructions. What could be easier for you and your family?

Do I still need a will?

Yes. Your living trust plan should include a pour-over will. This acts as a kind of safety net, just in case you forget to put an asset in your trust. When you die, the pour-over will "catches" the forgotten asset and sends it into your trust. The asset may still have to go through probate first, but it can then be distributed as part of your overall plan.

Is a living trust expensive?

Not when compared to the costs and loss of control that come with probate at death and court interference at incapacity. How much you pay for your living trust will depend, in part, on how complicated your plan is. Be sure to ask for an estimate in advance.

If you are your own trustee, you will pay no management fees. Successor trustees are entitled to receive a reasonable fee for their services when they step in for you, although family members rarely accept one. If you name a corporate trustee as your trustee or successor trustee, they will start charging a fee only when they start to act.

Should I have an attorney prepare my living trust?

Yes, preferably one who specializes in living trusts. An experienced attorney can provide valuable guidance and assistance, and assure everything is done properly.

How long does it take to get a living trust?
It should only take a few weeks to prepare the documents after you make the basic decisions. Then you'll need to change titles and beneficiary designations.

Do I have to go back to my attorney to change my living trust?
Only if you change something in the actual document-your trustee(s), successor trustees, beneficiaries, etc. A major event in your family (marriage, divorce, birth, death, incapacity) should prompt you to think about your trust and make appropriate changes. (These need to be made by your attorney, but they are usually inexpensive to make.) You do not need to change the document when you buy or sell assets; just title the new ones in the name of your trust.

Does a living trust protect my assets from creditors?
Not while you are living. That's because this is a revocable living trust, so you can put assets in or take them out at any time. But after you die, it becomes an irrevocable trust, which can protect the assets from your beneficiaries' creditors. If you are concerned about protecting your assets from creditors or potential lawsuits now, be sure to ask your attorney about some options.

Can a living trust be contested?
Yes, but it is often more difficult than contesting a will. In many states, because there is no probate, assets can be distributed quickly and privately. Disgruntled heirs may not even know you have died until after the assets have been distributed. If they want to contest, they would have to hire an attorney and sue the trustee and/or each beneficiary individually. This costly and time-consuming process often discourages even the greediest "heirs" from contesting a trust.

Are living trusts new?
Not at all. They have been used effectively for hundreds of years.

Why haven't living trusts been used more in the past?
One reason may be that probate is big business so your best interests may not have come first. Another reason is that estate planning is complicated, and many professionals did not have the necessary training and experience in this area. So, for years, only people who could afford the services of the top estate planning experts were given information about trusts. In recent years, nonprofessionals have become more knowledgeable about living trusts through seminars and publications like this one. As more consumers learned about them and wanted them, more professionals became educated about them, too. Today, living trusts are widely accepted and used by the legal profession as the foundation for most estate plans.

Who should have a living trust?
Just about everyone can benefit from having a living trust. Age, marital status and wealth really do not matter. If you own titled assets and want your loved ones (spouse, children, grandchildren or parents) to avoid court interference at your incapacity or death, you need to seriously consider a living trust, and the sooner the better. You may also want to encourage other family members to have one so you won't have to deal with the courts at their incapacity or death.

Is a "living will" the same as a living trust?
No. A living trust is for financial affairs. A living will is for medical affairs. It lets others know

how you feel about life support in case of terminal illness. However, a living will is limited because it deals only with very specific terminal situations. And, in most cases, it is simply a "directive" to your physician and is not legally enforceable.

A more powerful document is the durable power of attorney for health care (or health care proxy). This lets you choose the person you want to make any medical decisions for you-including life support if you are unable to make them yourself. It's legally valid and enforceable. And it keeps the courts from interfering in these private decisions.

If I get a living trust, have I finished my estate planning?

Not necessarily. A living trust is the perfect foundation for most estate plans. And, packaged with the appropriate "support" documents (pour-over will, durable power of attorney, health care documents), it will be all many families need. However, depending on the size of your estate, your family situation and your goals, you may need additional planning to make sure your plan does everything you want it to do. After reviewing your situation, the attorney who prepares your living trust may have some additional options for you to consider including irrevocable trusts, additional insurance, and/or a gifting program.

When should I set up a living trust?

Now, while you are healthy and you don't think you need one. Because, remember, with estate planning, you don't get a second chance.

You've taken the first step-you're finding out about estate planning and living trusts. And that's not an easy first step for many people. After all, none of us likes to think about our own mortality, or even the chance of becoming incapacitated. Which is exactly why so many families are caught off guard and unprepared when incapacity or death strikes.

Don't wait until it's too late for you and your family. A living trust is one of the most thoughtful and considerate gifts you can give to those you love.