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# Do You Need a Living Trust?

Absolutely—at least that’s what you might think after [reading articles online](#) or in newspapers or magazines. Living trusts are the hot trend in estate planning, and lots of attorneys are focusing their practice on marketing living trusts to seniors.

Unfortunately, there’s a lot of misinformation about living trusts, and lots of details are missing in those popular articles about them. Before you jump on the bandwagon, find out if there really are any reasons you should have one.



## How a living trust works

A **living trust** is a legal document that transfers ownership of everything you own into a trust. Yep: your trust then owns everything. That sounds a little scary, but it’s actually more workable than it might seem. When you create the trust, you also name a trustee, a person who is in charge of managing the assets in the trust.

Most people name themselves or their spouse (with an alternate to step in after you die), so you don’t actually give up any real control. The living trust is flexible, and you can take assets out of it or put assets in at any time, without any legal hoops to jump through. You can use, spend, give away, or do anything you want with any of the assets in the trust. If your house and car are in the trust, you continue to live in your house and drive your car. You can buy groceries and Christmas gifts with your money.

The assets remain in the trust during your life. When you die, the trust specifies how and when they will be distributed to your named heirs. A trust is more flexible than a will since you can leave assets in the trust for years after your death before they are distributed. Some people feel that children should not receive a large inheritance until they reach a mature age (such as turning 30) or achieve a significant milestone (like ~~graduating from college~~); ~~the trust gives you that flexibility~~

The benefit that has really generated wide acclaim, however, is that living trusts allow you to avoid **probate**. But the truth is, probate is not as big of a problem as some people make it out to be.

Most probate cases are resolved within a few months. Probate fees are not very large (a few hundred dollars in most states) and probably rival the costs of setting up and managing a living trust. Moreover, anyone who has a small estate will likely avoid probate anyway, as most states have procedures to handle estates worth less than \$50,000 or so. One compelling reason to avoid probate is that when a will is probated it becomes

less than \$50,000 or so. One compelling reason to avoid probate is that when a will is probated it becomes public record, but if you use a living trust to pass on your assets, its provisions remain private.

In most cases, it is advisable to create a will in addition to your trust. The will is called a pour-over will, and its purpose is to gather up any assets that got left out of the trust and transfer them in at your death. This will needs to be probated, so avoiding probate completely is not even usually an option.

## Living trusts and taxes

Living trusts have no impact at all on **estate taxes**, something most people don't realize. Estate tax is completely separate from probate, so avoiding probate doesn't avoid taxes. The only way to avoid estate taxes is to use an irrevocable trust, which is a completely different animal from a living trust – once you've set it up, you can't change it in any way. There are many options for planning to minimize estate tax, but a living trust by itself cannot achieve tax avoidance.

## Benefits of a living trust

Living trusts do have some benefits. In addition to the previously mentioned flexibility and privacy aspects of the trust, it can be revoked at any time if you change your mind. In addition, the trust offers excellent planning for a time when you may not be able to make your own decisions. Because the trust owns all of your assets, the trust (via the alternate trustee you name) manages them, so your financial life is already carefully planned as you age. A living trust can also be used to distribute assets you own in more than one state, rather than having to probate a will in each state.

While these advantages are real, they are most beneficial to the very wealthy. Living trusts offer fewer benefits for middle-class or lower-middle-class seniors who want to do some **estate planning**.

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### ***Guest Post by Brett Sember***

**Brette Sember** is a former attorney and author of more than 40 books, including *The Divorce Organizer & Planner*, *The Complete Divorce*, and *How to Parent with Your Ex*. She writes often about law, parenting, food, travel, health, and more. She also writes about legal issues in everyday life on the **Avvo Stories** blog. **Avvo** provides free answers from lawyers, client reviews, and detailed profiles for 97 percent of all attorneys in the U.S.; follow them on **Twitter** and **Facebook**.

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