

YOUR



CREATE

LIVING

TRUST

Create Your Living Trust eBook

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Introduction: AN OVERVIEW OF LIVING TRUSTS

Don't wait another day to draft your Living Trust. The longer you do or the more you depend on a will to protect your loved ones, the more you jeopardize giving control of your assets to a probate court. A Living Trust ensures that your loved ones receive their inheritance when they need it most and as you planned, as well as eliminates the delay of probate. This simple, inexpensive legal alternative helps curtail estate probate charges and expensive attorneys' fees.

Not to mention, the Living Trust shortens the time it takes to distribute funds to your heirs. Its very presence makes it difficult to contest or overturn your wishes regarding the distribution of your estate. You can take comfort in knowing the Living Trust remains completely private, rather than a public document open to inspection and it can be amended whenever you change your mind.

Taking the time and the initiative to plan can help resolve many of the problems associated with a traditional will and after-death settlements. It's also important to know, if you become incapacitated, your successor trustee can handle your financial affairs without interference of a court--appointing a guardian or conservator unfamiliar to you or your family.

A Living Trust can be used alone or in addition to a will. Consider if a Living Trust is right for you and, evaluate what trust will best protect your assets. This document contains information, definitions, contacts and resources to help you organize and complete your Living Trust. Don't hesitate. Explore your options and protect your assets and your loved ones' best interests!

Chapter 1: WHY YOU SHOULD HAVE A LIVING TRUST

This section answers the questions:

- What are the advantages of a Living Trust?
- How do you select your trustee?
- What are some of the duties and responsibilities of a trustee?
- What is the difference between a Will and a Living Trust

Consider where you keep valuable financial documents like cash, real estate, stocks, bonds, mutual funds. Let say, for the sake of argument, you purchase a giant safe to store them in. You give the combination to a trusted friend or family member, who guards the assets inside the safe and lets you use what you want when you want.

Eventually you pass away, leaving behind your loved ones and the contents of the safe. Shortly thereafter, the person you've entrusted to watch the safe unlocks it and distributes the contents to your family members—just as you have instructed. Unlike probate, there is no waiting, no public record, no estate attorney to bill your family, no taxes to pay, no fighting it out in court. Best of all, no one outside your family can get a peek at your estate or see a copy of your will.

Does it sound too good to be true? Not only is it possible, it's strongly advised especially if you have personal assets totaling more than your state probate limit (\$30,000 in some states, \$60,000 in others). Hard to believe it can be accomplished by something as simple as setting up a revocable Living Trust.

An Overview of a Living Trust

Simply put, a Living Trust is a legal agreement in which a person owning property (the *grantor*), hands over legal title to a second person (the *trustee*), who manages it. It's placed in someone else's name to avoid federal estate taxes and probate when you die. Based on your instructions, the trustee has the power to buy, sell, lease, or invest property--but you have final say as to what happens to all trust property.

STOP! Because the trust takes effect while you are alive, it is known as a *revocable* Living Trust. As the name suggests, you can revoke the trust agreement or appoint a different trustee at any time. Property can be added or removed from the trust as needed. You remain in control of your property, you are merely handing the key to someone else to protect the contents.

HINT: Trusts are not a new concept. They have been around since 800 A.D. They've been used by English knights to help protect their lands when they were called into battle. And they came into use in America after the 1700s as a means of helping colonists protect their property from taxes and government.

How Do You Choose a Trustee?

When it comes to serving as your trustee, you may choose a financial advisor or attorney. Then again, you can also serve as your own trustee. And while this may seem odd, it is perfectly legal in 49 states; only New York requires you to appoint a co-trustee.

You should also know that you can appoint someone outside your state as your trustee since residency in the state where the trust is made is not a requirement. However, you need to make sure that your trustees can be easily contacted as they will need to approve any changes made to the trust.

HINT: Even if you are your own trustee, your assets are protected from probate, since legally they are owned by the trust, a separate entity, rather than you.

Married people often name their spouses co-trustees or co-grantors. If you have confidence and trust in your spouse, you may choose to do this. Like many legal documents, both spouses must sign all trust-related documents. However, as a co-grantor, either spouse may end the trust without permission from the other.

Upon your death, the trustee automatically distributes the assets in your trust to your beneficiaries (people you have selected to receive property in the trust.)

What Are the Duties & Responsibilities of a Trustee?

Trustees must:

- Do anything that is directed by the trust agreement
- Refrain from doing anything which is forbidden by the trust agreement.
- Be familiar with all the terms of the trust
- Buy, sell, lease, or invest property according to your trust instructions
- Maintain records and accurate accounts act as witnesses to changes to the trust
- Act impartially between the beneficiaries of the trust
- Protect the assets of the trust
- Cannot delegate the trust powers or duties except when it is sanctioned by the trust or permitted by statute
- Transfer the trust property to the persons who are lawfully entitled to receive it

NOTES: No matter who serves as your trustee, it is advisable to appoint at least one successor. This will help ensure that in the event of the death of your trustee, someone will be willing and available to carry on your wishes.



NOTES: Trustees must deal with the trust property solely for the benefit of the beneficiaries of the trust.



NOTES: Trustees are expected to exercise reasonable care in the performance of their duties. In other words, a trustee could conceivably incur liability for negligence. However, the standard of this duty of care can vary between trustees, depending on special directives. For example, someone may be asked to serve as an alternative trustee or trust beneficiaries and not have day-to-day control over property matters while other may be directly involved.



Reviewing this information, you might ask yourself why do you need a trust, especially if you already have a valid will. As you consider this question, take a few minutes to review the reasons below:

9 Reasons for Establishing a Living Trust

- 1) **You avoid probate.** Most states require individuals with assets of \$30,000 or more (or over \$10,000 in real estate) to have their estates formally probated when they die. In some states this figure may be as low as \$10,000; in other states, only estates with \$60,000 or more in assets need go through the probate process.

Now don't think simply because you have less than \$30,000 in your account now that you can skip a Living Trust. Because, while you might not have \$30,000 in assets now, a lot can happen before your death. Inflation tends to drive up property values. In fact, property worth only \$15,000 today may have doubled in value by the time your will is read, putting you over the probate limit. So, as you can see, it is smart to plan ahead, and a Living Trust lets you do just that.

Of course, a Will still has its purpose. Parents need a Will to designate guardianship over minor children; people owing or owed money may also have to file a Will. However, for most estates, property distribution is much more easily accomplished with a trust.

- 2) **You avoid federal estate taxes.** Whether or not you put your assets in a trust, the Economic Recovery Act of 1981 allows for a federal tax exemption (called the Unified Tax Credit Exemption) on all estates. But if you are married and your estate exceeds this exemption, or if your estate appreciates in value by the time you die, your heirs may face considerable federal estate taxes without the help of a carefully prepared trust.

NOTE: With a trust in place, your family does not have to go to court to prove the validity of your intentions or appoint and pay a personal representative to administer your estate. Not to mention, there are no long delays in distributing the estate, by contrast, the Will probate process can take years, assuming there is no legal complications.



NOTES: Your income taxes are unaffected by a Living Trust. Since the trust is revocable (it only becomes irrevocable upon your death), the I.R.S. does not view it as a permanent entity, and hence does not charge you additional taxes.



Because the I.R.S. does not recognize a Trust, you do not need a separate tax I.D. number for it. As expected, you pay taxes on the property in the trust. And upon your death, your heirs will save a bundle on federal estate taxes.

- 3) **A trust is hard to challenge in court.** One of the biggest risks associated with filing a Will is that someone may challenge its validity in court. It may be someone who has been left out of the will or who received much less than he or she expected. The embarrassment, cost and nuisance of such cases can be avoided if you set up a Living Trust.

HINT: The goal is to take as much money out of your name as possible, keeping it from the I.R.S. and other agencies so your beneficiaries will inherit it instead.

Unlike a Will, which comes into play after your death, a Living Trust is administered with your approval, during your lifetime, leaving little doubt in anyone's mind as to how you want your estate to be managed. Therefore, it's difficult for someone to claim that the trust is a fraud or that you were incompetent when it was formed. And since the Trust becomes irrevocable upon your death, no one can interfere with the distribution to your intended beneficiaries.

NOTES: A Trust may not totally shield you from creditors. Although in some cases a Trust may protect your assets in a job-related lawsuit, the protection of a Trust is, at best, limited. However, your assets may not be taken if your trustee owes money to creditors; only your debts may be applied to the trust.



- 4) **Privacy is assured.** One challenge with probate is that any interested party may see what you left to whom simply by looking up your will at the local probate court. This cannot occur with a Trust, since the schedule of assets itself does not have to be publicly filed.
- 5) **You remain in control of your assets.** A Trust guarantees that your beneficiaries are provided for. It also gives you full use of your assets while you are alive, although if there are co-trustees, they both must agree to the disposition of assets. Because of this, it is essential that you appoint someone you know well as a co-trustee if you choose to have a co-trustee.

While it is wise to appoint someone financially knowledgeable as a trustee (or successor trustee), you must be sure that person will carry out your wishes as you instruct. Many people solve this by appointing one professional trustee—e.g., an accountant or attorney—along with a second trustee who is a close friend or family member and will look out for the grantor’s personal interests.

NOTES: Remember, so long as you are alive and competent, you can change your trust at any time. Trusts may be broken. Don't feel you are giving up control of your belongings by forming a trust. If anything, you are gaining control by ensuring your assets will go where you want them to.



- 6) **A trust provides conservatorship rights.** Property is not the only thing a trust protects. You may provide for *conservatorship* through a Living Trust, meaning you name a person to make your important healthcare decisions and manage your property if you are incapacitated. This very important aspect of a Living Trust.
- 7) **Out-of-state property is protected.** If you own property across state lines, probate is an especially long and difficult process. By contrast, a Living Trust allows you to administer out-of-state property fairly easily. You may even be able to appoint an out-of-state trustee, or set up your Trust in another state so as to take advantage of better tax laws.
- 8) **Trusts are legally recognized.** Trusts are legally recognized in all 50 states. However, trusts may be regulated differently from state-to-state, especially in a *community property, dower, or curtesy state* where a spouse, by law, is entitled to a part of the estate. Many foreign countries also hold Trusts to be valid. Generally, if a country follows British common law, the country will recognize an American-formed Trust. If you are considering moving to a foreign country, consult an attorney or foreign consulate to determine whether your Trust will be upheld.
- 9) **The best news of all: trusts are easy.** Living Trusts cost little and are easy to form. This is especially true if you research trusts and decide what type you need before you consult an attorney. The point of this book is to help you do just that.

Chapter 2: WHAT TRUST IS BEST FOR YOU?

This section answers the questions:

- What are *Unified Tax Credit Exemptions*?
- What are dower and curtesy requirements?
- What states are dower and curtesy states?
- What are the *community property state guidelines*?
- What states are community property states?
- What's a *Testamentary Trust*?
- What's an *Insurance Trust*?
- What's a *Totten Trust*?
- What's the *Irrevocable Living Trust*?
- What's the *Spendthrift Trust*?
- What other Trust exits?
- What rights do unmarried couples have when it comes to forming a trust?

Trusts can be as varied as individuals. This guide includes a basic single Living Trust for an individual or married couple whose estate is valued at less than the Unified Tax Credit Exemption (see chart below). If you have assets valued at more than the Exemption, there are two popular trust options to consider: the *A-B Trust* and the *A-B-C Trust*. These are joint trusts for estates exceeding a certain value. You should seek legal advice if you want to set up either of these trusts.

What is the Unified Tax Credit Exemption?

With the Economic Recovery Act of 1981, \$600,000 was the amount established as the maximum value allowed for exemption of one person's estate. A couple could combine this amount, for a total limit of \$1.2 million.

As of January 1, 1998, this amount began to increase gradually and will continue to do so until 2006 when a maximum of \$1 million (\$2 million per couple) is reached. You can refer to the following chart to see the amount allowed for exemption each year through 2006:

<i>Unified Tax Credit Exemptions</i>						
YEAR	SINGLE	COUPLE		YEAR	SINGLE	COUPLE
Pre-1998	\$600,000	\$1,200,000		2002	\$700,000	\$1,400,000
1998	\$625,000	\$1,250,000		2003	\$700,000	\$1,400,000
1999	\$650,000	\$1,300,000		2004	\$850,000	\$1,700,000
2000	\$675,000	\$1,350,000		2005	\$950,000	\$1,900,000
2001	\$675,000	\$1,350,000		2006	\$1,000,000	\$2,000,000

What Are Dower & Curtesy Requirements?

A *dower* is the portion of property due the wife by law; a *curtesy* is the property due a husband. Several states have laws requiring grantors to leave a certain amount of money to their spouses. In these dower and curtesy states, spouses are required to leave a minimum of a third to half their property to their surviving spouse. Such laws overrule any contrary conditions set forth in a Trust.

For example, if you live in a dower state and designate that no more than 10 percent of your property should go to your husband, the state will ignore your wishes and give one-third or more of your property to him.

NOTE: Hawaii, Kentucky, Massachusetts, Michigan, Ohio, and Vermont are dower and curtesy states. Consult an attorney if you live in any of these states and plan to set up an A-B or A-B-C Trust.



What Are Community Property State Guidelines?

In community property states, all money earned by a husband and wife during their marriage, and all property bought with that money, is divisible into two equal portions.

NOTES: Community property states include: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin.



In most community property states, if a husband and wife commingle their property (put all their money in one joint bank account) that property is considered community property. For example, if you want an asset (a grandfather clock heirloom) not to be considered community property, you must keep it out of the Trust and legally declare it to be separate property.

If you live in a community property state, consider forming two separate trusts, one in your name and the other in your spouse's.

What Is a Testamentary Trust?

Unlike a Living Trust, the Testamentary Trust doesn't take effect until after you die. It functions similar to a Will, designating who you want your property to go to. For example, you may designate that your money first goes to your children during their lifetime, and then the remainder goes to your grandchildren as they reach a specific age.

One of the problems with a Testamentary Trust is that it must go through probate. So unless your total estate is quite small, this is one long, expensive process you want to avoid. Living Trusts avoid probate, and for this reason, they tend to be superior to Testamentary Trusts. People with estates below the Unified Tax Credit Exemption may be able to distribute their property using a will and Testamentary Trust. Most people, however, should consider a living trust.

What Are Insurance and Totten Trusts?

An Insurance Trust can help couples whose combined estate exceeds the Unified Tax Credit Exemption to divide their estates into two trusts, so that each trust is below the exemption limit. You see, when adding up the value of the property in your estate, you are required to include the face value of your life insurance. In doing so, couples with substantial insurance may find their total estate value exceeds the Unified Tax Credit Exemption cutoff for untaxed inheritances, forcing them to pay estate taxes. Therefore, putting the insurance into a separate trust deducts the face value from your estate--giving you fewer assets in the eyes of the government --allowing you to meet tax limits.

If you form an Insurance Trust and die within three years, your family will still face an estate tax. Therefore, only set up an Insurance Trust if you are physically and financially able to accept the risks involved. Individuals with large insurance policies and estates over the Unified Tax Credit Exemption limit will benefit most.

Many people whose primary assets are bank funds utilize a *Totten trust*, where a trustee (often the grantor) manages a bank account while he or she is living and the account funds go to the beneficiary upon the grantor's death—without probate.

STOP! There are things to consider before setting up an insurance trust. First, it is irrevocable--which means that once you put your insurance funds into the trust, you cannot get that money back, even if you need it later. You may, however, still change insurance companies. Second, your beneficiaries must pay premiums on the insurance policy.

What's an Irrevocable Living Trust?

Property assigned to the *Irrevocable Living Trust* is exempt from federal estate taxes because the Trust is not considered to be part of the grantor's taxable estate. However, an Irrevocable Trust may not be changed or revoked once it has been established. A Trust is irrevocable unless it contains a statement specifically saying it can be revoked. Control may only be established through detailed descriptions in the trust document itself, of management and beneficiaries.

What Is a Spendthrift Trust?

Spendthrift Trust is designed to protect the assets of the Trust from the creditors of the beneficiary's reckless spending. Typically, the beneficiary's creditors cannot reach the principal and interest of the trust until it is received by the beneficiary. This effectively prevents a beneficiary, who is in a hurry to receive his inheritance, from selling his interest to another—often at a discount—before the estate is settled.

STOP! Never establish an irrevocable trust without first obtaining qualified legal advice. Giving up the right to control and amend your trust should never be taken lightly.

Other Types of Trusts

There are many different types of trusts. Choose the trust that is best for your needs:

- **A Trust:** for singles or couples with less than UTCE
- **A-B Trust:** for couples
- **A-B-C Trust:** for couples with assets over the UTCE or w/children from previous marriages
- **Testamentary Trust:** goes into effect after grantor dies
- **Insurance Trust:** special trust to hold insurance policies or proceeds
- **Totten or Pay-on-death Trust:** bank account trust
- **Revocable Trust:** a general term meaning a trust can be revoked at any time prior to the grantor's death.
- **Pour-Over-Will Trust:** supplement to the trust

HINT: Totten trusts, also called pay-on-death (POD) accounts, are most often used as a means to avoid probate for bank accounts, government bonds, individual retirement accounts and, possibly, securities or a car.

Trust Rights of Unmarried Couples

Unmarried couples reading this section are probably wondering: How about us? Do we have the legal right to form trusts and enjoy these tax savings as married couples do?

The answer is yes—and no. Unmarried couples do have equal rights in most states when it comes to forming a trust. However, many community property states do not allow you the same estate tax benefits as married couples. Unmarried couples would therefore do well to consult an attorney knowledgeable about trusts to see what their specific state laws are at this time.

HINT: As public views change toward unwed unions, trust laws are likely to change as well. Even now the laws regarding single couples and trusts are much more liberal than in the past.

Chapter 3: GETTING ORGANIZED

This section answers the questions:

- What questions should you discuss with your family regarding the Living Trust?
- Whose approval does amending your Living Trust require?
- Can your trust designate money for a college education?
- What is a *Schedule of Assets*?
- Who should you check with before transferring your primary residence to a revocable Living Trust?
- What items are included on a typical Schedule of Assets?
- What documents will you need to pull together to prepare your trust?

So now that you've identified which trust best suits your needs you're ready to see an attorney, right? Wrong! The majority of attorneys charge by the hour. So if you don't have all your documents together before you meet with your attorney, you'll waste valuable time and money discussing things you can handle on your own. It's true that you'll need a lawyer at some point, but not just yet.

Use this time to get your documents together, and make sure you don't forget to file your forms with the appropriate agencies. You'll also need to draw up a *Schedule of Assets* and locate any real estate deeds, corporate stock certificates, bank books and other proof of property ownership in preparation for transferring your assets to a trust.

Questions to Discuss With Your Family

Before you fill out any paperwork, consult with an attorney, or pull together paperwork, speak to your family. While this may seem obvious, it is often overlooked. Like most others, you will likely designate members of your family as beneficiaries. It's also quite possible that you'll name a member of your family as co-trustee or successor trustee. If you're like most parents of small children, you can be reassured to learn that a trust will provide for their financial futures in the best way possible. Your family will need to know where to find your important financial documents and will want to make sure your wishes are carried out. Listed below are some of the questions you and your family must decide:

- ***Who should serve as the successor trustees (assuming you are the trustee during your lifetime)?***

You can choose up to three people to fill the successor trustee roles. The important thing is identify people you and your family feel comfortable with to look out for your interests. An adult child (with sound judgment) may serve as a successor trustee. And at least one of your successor trustees should have basic accounting/legal knowledge, as they will be required to submit complicated tax forms. As a side note, a stipend is often provided to the successor trustee in return for these duties.

HINT: Amending your trust requires the approval of all co-trustees, so select trustees and successor trustees who can be available for this responsibility on an ongoing basis.

- ***Who will be your beneficiaries and contingent beneficiaries?***

Your spouse and children are usually your main beneficiaries. However, you also need to consider who your money should go to if you outlive any of your main beneficiaries. These alternates are contingent beneficiaries of the trust.

As you consider beneficiaries, don't overlook donating to charity. Most contributions are not only tax deductible; they are also a wonderful way to thank an organization that has helped you or your family. Perhaps there is a hospital, church, retirement home, college, or other nonprofit institution that can benefit from a donation from your estate. Many of these institutions have Planned Giving Officers whose job is to help set up charitable bequests. If you're considering this kind of contribution, contact the organization, and request to speak to the Planned Giving Officer or someone else on the fundraising staff.

- ***What are the needs of each beneficiary, and how will the trust provide for him or her?***

If you have young children, you should include a clause in your trust designating money for their college education. And if you have a family member who will require caretaking when you're gone, you need to consider will care for them and how much will it cost? The trick is to project 20 to 30 years ahead, which is nearly impossible as some situations are likely to change. You could get married, have children or become ill. And don't forget, costs are likely to double every ten years or so due to inflation.

NOTES: A lawyer or accountant may be able to help you project costs, but only you know your family's needs.



HINT: When drafting your trust, be as specific as possible. If you put in a clause about your child's education, define the word "education" so that a successor trustee understands what is and is not covered. If your child chooses a technical school or art institute instead of a college, will that be paid for by the trust? Will the trust pay for graduate school?

Review with your successor trustees what their duties will be. Make sure they are willing and able to take on a considerable amount of responsibility. Also settle how much they will be paid (if at all) for their help so there is no misunderstanding later, and put this amount in writing.

Getting to the Bottom of Your Assets

As you list the assets in your estate, number each item and provide a detailed description of its appearance, function, location, and type of ownership (for example, do you own it separately or is it jointly owned with your spouse). Write down your estimate of its market value (replacement cost). If in doubt, you may need to have some items appraised by a professional. When you list your assets, make sure you include the face value of any life insurance policies in your asset total.

Your accountant or lawyer can review the list for accuracy. The main thing is to generate a working total on which to base your initial decision making. Add your total assets together. Next, figure out your debts (including mortgages, bank loans, and other expenses.) Keep in mind, you're looking for an approximate figure, you don't have to be exact.

To get the net worth of your estate, subtract your debts from your assets. This will give you an idea of how much estate taxes your family will have to pay, as well as the total value of the assets in your trust. This list is referred to as a *Schedule of Assets*. It will be attached to your trust agreement, and serve as proof that you intended to include these assets as part of your trust. It also provides your successor trustees and family with a map of where to find each asset.

There are several assets that should not be included in a trust. Checking accounts a balance less than \$30,000 are best left out, since they are not subject to probate and your spouse automatically inherits them. You should also leave out personally owned motor vehicles, as they will not be probated, depreciate in value and do not include either insurance not payable to the estate or subchapter S corporate stock.

STOP! Check with your local county tax assessor before transferring your primary residence to a revocable Living Trust. The transfer may be viewed as a change in ownership, triggering the “due-on-sale” clause and jeopardizing

Most assets will go into the trust, especially if there is any chance they will bring your estate total over the probate limit.

NOTES: You should include in your Living Trust any motor vehicle such as an antique or classic car purchased as an investment or on which you spent considerable money restoring.



Sample of Items to Include on Schedule of Assets

- Safe deposit boxes
- Real estate
- Stocks (excluding S Corporation stock)
- Bonds
- Accounts receivable
- Businesses (solely owned, partnerships, corporate interests)
- Bank accounts over \$30,000

- Household furniture
- Jewelry
- Life insurance payable to the estate
- Mutual funds
- Mortgages/liens
- Miscellaneous personal property
- Intangible items (e.g., copyrights, trademarks and patents)

NOTES: Remember, an exempt homestead may also include a mobile home or a boat. Check with your county tax assessor.



A married couple will often transfer one partner's retirement benefits into the trust. This is not always a good idea; to be on the safe side, consult with your attorney first. Before you transfer an employer-paid pension, speak to your company's personnel officer about what benefits will be coming to you upon your retirement. You should arrange to have your benefits go to your spouse as first beneficiary, followed by the trust as a contingent beneficiary. This will ensure that in the event your spouse is deceased when the benefits become payable, the benefits will automatically go to the trust without probate.

NOTES: Persons intending to receive Medicaid may be required to file for Medicaid at least two years before setting up a trust. Check with your attorney if this is an issue.



Once you have decided what you will put in your trust, you need to gather all documents related to those items. Find your deed, insurance policies, stock certificates, mortgage documents, and anything else that proves property ownership. Jointly owned property may be transferred into the trust with the approval of your spouse, so there should not be any problem if an item is in both spouses' names.

How to Transfer Property to a Trust

Simply itemizing your property on the Schedule of Assets does not transfer them to the trust. To do so, the trust must obtain title to those assets.

Helpful tips on transferring different assets are found later in this chapter. The total transfer process usually takes several weeks, depending upon how much property you have. And you may even consider transferring your assets gradually. A thoughtful plan written down in advance of starting your trust can help you pace this effort.

First, list each item to be put in trust on the *Assignment of Property to Trust* form. Financial officers at your bank can help you transfer your bank account fund(s) to a special trust account—just make sure you remember to bring your trust agreement. While you're at the bank, you should rent a safe deposit box to store some of your assets.

Your bank will keep a *signature card* on file showing that a trust account exists; be certain when you sign trust checks that your signature is on behalf of the trust. Also specify to bank officials whether one trustee alone may sign on behalf of the trust regarding bank transactions or whether

all trustees need to sign. If you don't specify this, the bank may require all parties to sign all documents.

STOP! Make copies of the blank Assignment of Property form before you fill it in so you will have extras for any future changes. Always use your full legal name on all documents; otherwise their validity may be challenged.

Some assets may only be transferred by obtaining the signatures of third parties. Stock transfers may require a call or visit to your broker, as the stock certificates must be changed to reflect that the trust is the new owner. A small securities transfer tax may be charged.

HINT: Never commingle funds, or mix funds from outside the trust with funds from within the trust. Maintain two checking accounts—one for the trust and another for your own personal needs.

The *Schedule of Assets and Assignment of Property* forms are attached to the main trust document, known as the revocable Living Trust. Essentially this document lists the grantors, trustees / successor trustees, trust property, beneficiaries, how the property is to be divided, and the state whose laws will govern the trust (usually your state of residence). It also contains any special conditions that may apply—e.g., at what age your children should receive their inheritances, or even provisions for taking care of your pets. Name and date your trust. Trusts are commonly named after the grantor making the trust. For example, if your name is Jane Doe, you may name your trust *The Jane Doe Trust*, or the *Doe Family Trust*. Insert the name of your trust on the top of your revocable Living Trust, after "Known as."

Check your state laws if you are disinheriting a spouse or child from receiving property, because not all states allow you to do so. It is advisable to attach to the trust a separate note of instructions stating why you are disinheriting. Otherwise the disinherited person may take the estate to court after your death, and might successfully challenge your trust. Giving your attorney a note with the reasons for the disinheritance is an option in place of attaching the note to the trust. A third document, the *Certificate of Trustees' Powers*, is also commonly attached to the trust document. The Certificate shows which powers you are giving your successor trustee, such as the right to sell, buy, or lease your property.

Signing your trust

Execute your revocable Living Trust as you would a will. The trust must be signed by the grantor, in the presence of three witnesses. The three witnesses must sign in front of each other as well as the grantor.

Filing trust documents

The Certificate of Trustees' Powers is usually filed publicly in place of the revocable Living Trust, which is advantageous because although it lists the trustees and beneficiaries, it does not show who inherits what. You should also file an Affidavit of Succession which states the terms for changing trustees if your present or successor trustees become mentally incompetent or otherwise unable to serve.

Several states have adopted the *Uniform Probate Code*. This Code requires you, the grantor, to publicly file your trust with the county recorder. Check with your local Probate Registry to see the specific filing procedures you must pursue if this applies to your state.

HINT: Even if your state does not require you to record your trust, you should consider doing so. Recording it offers legal proof that the trust exists, and shows that you intended to distribute your property according to the trust agreement. Before you file any thing publicly, bring the documents to a trust attorney to ensure that you have filled them out right.

Once your documents are signed, make copies for your trustees, attorney, accountant, beneficiaries, and others who need to have information on your financial arrangements. Keep a copy in your home or safe deposit box for easy reference. And make sure you keep one or more assets in your trust at all times as a trust with no legally transferred assets is considered invalid. You must put at least one asset into the trust before it will take effect, so make sure the Transfer Forms and Deeds are filled out properly.

NOTES: All trusts must be notarized. Bring three witnesses and your trustees to the Notary Public's office, along with the trust documents.



Transferring Your Assets to Your Trust

- **Business Transfers** --- Use the Assignment of Property to Trust form for solely owned businesses; for partnerships, get written permission from each partner and fill out the Assignment of Property form.
- **Corporate Stock** --- Fill out the assignment on the back of the stock certificate; sign it and mark "Canceled" on the back; have a new certificate issued for the same amount of shares in the trust's name.

- **Deeds of Trust** (When someone owes you money and pledges their real estate) --- In addition to including the promissory note on the Assignment of Property form, have your attorney draw up a special Assignment of Property form for the real estate that's involved.

HINT: Follow-up to ensure that the Assignment of Property form is recorded with the county recorder's office in the name of your trust. That helps ensure that the property may not be sold until the debtor has repaid the money they owe you.

STOP! Be careful to transfer only the beneficial interest of your assets, not ownership, for such things as your IRA, pension plan, stock and bonds, insurance and annuities.

- **Insurance Policies** --- Call your life insurance firm and request a Change of Beneficiary form; list your trust as the beneficiary; send the form back.
- **Intangible Items** (such as copyrights and patents) --- Include each item on the Assignment of Property form; give notice to the U.S. Patent or Copyright Office.
- **Motor Vehicles** (Do not transfer unless so advised by an attorney) --- Include on the *Assignment of Property* form; go to the nearest Registry of Motor Vehicles and fill out an official Endorsement of Ownership Certificate transferring the motor vehicle to the name of the trust.
- **Personal Items** --- Include each item on the Assignment of Property to Trust form.
- **Promissory Notes** --- Endorse the front of the note in the name of the trust; fill out a Transfer form.
- **Real Estate** --- Have your attorney make out a new deed with the trust as the owner; file the deed with the local Registry of Deeds, along with the Certificate of Trustees' Powers, showing your trustee's power to buy and sell the property. There is usually a small recording fee involved in this process call your local registry or county recorder's office for the amount. If a mortgage is involved, you must speak with the lending company about transferring title.

NOTES: If you decide to refinance in the future, your real estate will have to be taken out of the trust, but may be returned to the trust immediately afterward.



STOP! Check with your county tax assessor before transferring your primary residence to a revocable Living Trust. If your county views such as transfer as a change in ownership, you may lose your homestead exemption, trigger the "due on sale" clause in your mortgage, and give rise to a new assessment.

- **Retirement Benefits** --- Consult your attorney.
- **Safe Deposit Box** --- These may not legally be put in the name of the trust; they must be in the name of an individual. Transfer items in the safe deposit box to the trust instead, by including them on the Assignment of Property to Trust form; ask a bank officer if you have questions.
- **Savings Accounts, Certificates of Deposit and Treasury Bills** --- Show a copy of your trust agreement to the bank officer; fill out a signature card indicating who needs to sign trust documents; have these accounts put in the name of the trust.

HINT: You can transfer your checking account(s) to your trust, and still leave your name and address on the checks. By not putting the name of the trust on the checks, you help to avoid any confusion when you go to write a check.

- **Stocks and Bonds** --- Obtain a Stock Power form from your broker; turn old stock and a copy of your trust agreement; have stock and bonds reissued in the name of the trust. (Series EE Bonds may be transferred by going to your nearest Federal Reserve Bank; bring a copy of your trust agreement.)

HINT: Stocks and bonds are nonnegotiable until they are signed. Once signed, anyone can negotiate the stocks and bonds! For added protection, forward the unsigned stocks or bonds and the Stock Power form in separate envelopes. When both are received, they can then be put together and negotiated.

Chapter 4: THE BASICS OF ESTATE PLANNING

This section answers the questions:

- What's a *Pour-Over Will*?
- How do you name a guardian?
- How specific should you be when naming a guardian?
- What are the duties of a guardian?
- What's *Durable General Power of Attorney*?
- What's a *conservator*?
- What's a *Directive to Physician*?
- What forms should your estate plan include?

While a Trust will cover how your money is to be distributed, it doesn't deal with personal aspects of your estate like who will care for your minor children if something happens to you, or who will make decisions on your behalf if you lose your mental competency. These issues are often resolved through the topics included in this chapter.

What is a Pour-Over Will?

So what happens if you leave an asset out of your trust? Nobody's perfect, so it's quite likely you might forget an item or two. As the years progress, you may lose track of your assets, failing to update the trust with new items you've received. Or, quite simply, maybe your memory has started to fade. These are just a few reasons why the catch-all pour-over will was created. Unlike a standard will (which replaces a trust) the pour-over will is designed to supplement a trust by protecting assets you forgot to include in your trust. Basically, pour-over wills state that all assets left out of the trust that should have been included are to be included in the trust at that time.

To provide a pour-over provision for your trust, simply add the following provision to your will:

“The remainder of my estate wherever located, I give to the trustee or trustees named under a certain Revocable Living Trust executed on March 3 2004, between myself and the trustee of AnyTrust in the county of AnyCounty and State of AnyState, to be added to the principal of the trust and to be administered in all respects as an integral part of that trust.”

NOTES: Remember, assets covered by this pour-over provision are subject to probate, so it is best to review your trust regularly to ensure all your assets are listed in your trust.



How Do You Pick a Guardian?

An updated will protects more than your money—it protects your family’s personal interests. As such, a pour over clause will can be used to designate guardians for minor or disabled adult children.

HINT: Be specific when naming children’s legal guardians and the custody rights they will have. For example, if you want your brother to have custody of your daughter, but you are concerned that he and his wife may separate, clearly state that custody goes only to your brother and not to his estranged wife.

For your peace of mind, speak to your guardians before you name them in the will. Appoint people you have known for a long time; and, wherever possible, choose close family members. As you talk with your potential guardians, make sure they understand—and want—their assigned duties. If you have any doubts, choose alternate guardians instead

NOTES: In addition to being responsible for providing care, comfort and education for the child, the guardian is also responsible for the child’s property. Therefore, if you are leaving property to a minor, that property must be entrusted to the guardian.



Guardian Duties

- to possess and manage the minor’s property
- to manage and invest the minor’s assets
- to use the funds for the benefit of the minor
- to provide a regular accounting to the probate court
- to file and pay the minor’s taxes
- to distribute the remaining funds to the minor when he or she reaches adulthood

HINT: While you are considering the finances needed to support the child, consider compensating the guardian if it is within your means to do so. The guardian is going to be asked to post a bond with the court. While this bond is an expression of good faith, you may state in your will that the guardian is to serve without posting bond.

Your children are not the only ones who may need guardians. As people live longer, more and more are reaching an age where their mental capacities decline and physical problems arise. When people are unable to care for themselves, their families must go through a public, humiliating process to gain conservatorship over them and their estates. This is another instance in which a good estate plan can help.

Identifying a Caregiver

Several documents deal specifically with the issues of conservatorship and health care. The *Durable General Power of Attorney* allows a competent adult to make decisions for you if you are unable to speak for yourself.

Before Durable Powers of Attorney, the only option was to have the court appoint a *conservator* (a court-appointed custodian of property belonging to a person determined to be unable to properly manage his property). There are a number of reasons that this is not always an advisable option, including:

- 1) ***The time delay.*** It may take up to months to have a conservator appointed who will have the authority to make medical decisions for you. With a Durable Powers of Attorney your agent can act for you immediately. This helps you avoid the vulnerability that comes when you lack the continuous ability to protect your interests.
- 2) ***Selection of Agent.*** When you are ill or disabled you lose the ability to select your conservator or guardian. Further, the court might not appoint the conservator who you prefer. Not to mention, you might pick one person to make health care decisions for you and select another to manage your business/financial affairs. This is only possible when you appoint individuals while you have the capacity to act.
- 3) ***Cost.*** Having a court appoint conservator can be a costly experience. The fees can range from hundreds to thousands of dollars depending upon the complexity of the case and whether it is a contested proceeding as well as the state you live in. You can avoid these costs by appointing your own agent.

Durable Powers of Attorney is especially important if you have property that needs to be added to the trust and you are unable to do it. While a revocable Living Trust agreement gives your successor trustee the right to manage property inside the trust after your death and your will gives your appointed executor the right to manage outside assets after your death or upon your incapacitation, neither document protects assets outside the trust if you are living but mentally impaired. The Durable General Power of Attorney provides the same coverage (allowing an appointed person to take over automatically) without the hassle of conservatorship proceedings.

A Durable Power of Attorney for Healthcare states whether you give a hospital permission to use artificial means to save or prolong your life. This continued to become an issue of significance as medical technology improves.

STOP! A separate document, the Durable Power of Attorney for Healthcare, deals specifically with healthcare decision-making. As with the General Power of Attorney, it takes effect only if you are unable to make your own decisions; however, it must be drawn up *while you are still competent* or it will be declared invalid. That is why it is important to draw up an estate plan now.

In many states, if you do not designate what you want done, the attending physician has no choice but to use artificial means to sustain your life, even if your family objects. However, if you put in writing what you do and do not want, and if you appoint someone to speak on your behalf, your wishes will almost always be upheld.

Name a trustworthy individual as your decision maker in a Power of Attorney for Healthcare. This person will have access to your medical records. It's important to make sure this person agrees with your view on artificial life support to ensure that your wishes will be carried out.

A clause within the revocable Living Trust also allows you to select a *conservator*, the person you want to care for you physically on an everyday basis in the event you are unable to care for yourself. This is another instance where identifying the right and willing person is critical. Take the time to think through your decision carefully.

You should take some precautions as you complete these healthcare-related documents. First, put a clause in your Power of Attorney for Healthcare giving you the right to appoint a new conservator if you should change your mind. This will protect you if your first-choice conservator doesn't work out.

Second, put in a clause stating at what point you may be ruled incompetent. The best policy is to require at least two physicians to agree on your incompetence before the Power of Attorney goes into effect.

Third, all of the above documents must be witnessed by at least three people, none of whom may be your relatives, health care providers, conservator, personal representative, guardian, or beneficiary. Documents should be notarized and sent to all of your regular healthcare providers so they will have copies if and when the documents go into effect.

NOTES: You may want to file a Directive to Physicians, (also called a Living Will) which deals specifically with the life support issue and leaves no room for misinterpretation. You will still need to file a Power of Attorney for Healthcare to cover other health-related matter



Important Estate Plan Documents

- Revocable Living Trust with conservator nomination
- Schedule of Assets
- Schedule of Beneficiaries
- Certificate of Trustees' Powers
- Amendment to Trust
- Revocation of Trust
- Affidavit of Succession
- Assignment of Property to Trust
- Bill of Sale
- Deed showing transfer of real estate to the trust
- Stock certificates made out to the trust
- Life insurance policies naming trust as beneficiary
- Checkbooks in the trust's name (if funds exceed probate limit)
- Last Will & Testament with pour-over provision

- Durable General Power of Attorney
- Durable Power of Attorney for Healthcare
- Directive to Physicians

Chapter 5: EXPERT ADVICE

This section answers the questions:

- Why is it important to consider consulting with an attorney about your trust?
- What is the significance of the *1981 Economic Recovery Act*?
- What are some common tax questions that should be considered when creating a Living Trust?
- In which situations should you seek an attorney's advise?
- What questions should you ask your attorney?
- Should you have a will?

By reviewing this document and getting to know your financial options, you will save time—and possibly money. However, there are several reasons why you should consult with an attorney about your trust.

First, local and federal estate laws are constantly changing. As stated earlier, wills made before 1981 should be amended because of the 1981 Economic Recovery Act, which gave every person the \$600,000 exemption. This exemption now increases each year to a maximum \$675,000 in the year 2001. This is one good reason to see an attorney: if the laws change, attorneys are usually the first to know and can help organize your estate accordingly.

NOTES: The point of this document is not to help you avoid attorneys and their associated costs. Attorneys have extensive training that no guide is going to teach you in a few chapters.



<i>Unified Tax Credit Exemptions</i>						
YEAR	SINGLE	COUPLE		YEAR	SINGLE	COUPLE
Pre-1998	\$600,000	\$1,200,000		2002	\$700,000	\$1,400,000
1998	\$625,000	\$1,250,000		2003	\$700,000	\$1,400,000
1999	\$650,000	\$1,300,000		2004	\$850,000	\$1,700,000
2000	\$675,000	\$1,350,000		2005	\$950,000	\$1,900,000
2001	\$675,000	\$1,350,000		2006	\$1,000,000	\$2,000,000

In the event your gross estate as grantor exceeds the Unified Tax Credit Exemption, individually or combined, you may minimize your estate taxes by having you and your spouse set up separate reciprocal Living Trusts often called “credit shelter trusts” or “A-B trusts.” This estate planning tool allows your estate to pass to the trust rather than directly to the surviving spouse. The trust, in turn, provides the surviving spouse with a lifetime income. Since your trustee must be aware of your intention to use this trust, you may provide the following sample instructions:

“If my spouse shall survive me, I direct that my entire trust estate be given to my trustee(s) to be divided into two separate trusts which are herein referred to as “Trust A” and “Trust B.”

- a) *Trust A shall have placed into it the sum of \$_____. Said sum represents one-half of the value of my adjusted gross estate as defined by the Internal Revenue code for the purposes of the marital deduction. Trust A shall be reduced to the extent allowed under the Internal Revenue Code, by the value of all assets that pass or have passed to my spouse other than by the terms of this paragraph and that satisfy the marital deduction.*
- b) *Trust B shall have placed into it an amount equal to the balance of my residuary estate after deducting the amount allocated to Trust A.”*

Frequently Asked Tax Questions

For the most part, a Living Trust poses no particular tax problems. Use the responses to the questions below to guide you through some of the most common questions

- ***Is there a taxable consequence when property is transferred into the trust?***
The transfer of securities to or from a Living Trust may incur a securities transfer tax in some states. Check with your accountant or attorney if you plan to transfer substantial amounts of stock.
- ***Is it necessary for the trust to file its own tax return?***
As long as you appoint yourself or your spouse as trustee, there is no need to get a separate taxpayer identification number for the trust or file a fiduciary income tax.
- ***What tax problems arise if the trust is set up in a state other than where the grantor resides?***
You can run the risk of double state income taxation should you set up a Living Trust in another state. You can avoid this problem by setting up the trust in the state where you reside. Should you move to another state, simply amend the Living Trust to reflect that it will be governed by the laws of your new state.
- ***Does a Living Trust affect personal income taxes?***
A Living Trust does not change your personal income tax obligation. Even when income (i.e., a personal paycheck) is deposited directly into the trust, you must still report and pay taxes on the income. Similarly, you can deduct tax-deductible expenses, notwithstanding their payment from the trust.

Those who have estates worth more than the Unified Tax Credit Exemption may need to set up more complicated trusts if they are to keep their money away from tax collectors.

STOP! A will made before 1981 could cost a person's estate thousands of dollars if it is not updated.

Those with nontraditional family situations — pending divorces, stepchildren, adult children who need conservatorship — must set up their trusts care fully to make sure their money goes where it should. A qualified attorney can give you further information on specialized trusts, such as insurance trusts and spendthrift trusts, if you ask (and by using this guide you will know what to ask).

Situations to Seek Legal Advice

Persons who are in the following situations should always seek an attorney’s advice:

- Those who live in community property, dower or curtesy states (particularly if you do not want to leave half of your property to your spouse, you are not naming your spouse as co-trustee, or you are seeking a divorce)
- Non-U.S. citizens (there are limits on your ability to participate in a trust agreement)
- Those receiving veterans' benefits or applying for Medicaid (these may sometimes be affected by estate planning)

Stay away from an attorney whose main area of practice is litigation or criminal law; they will probably not be able to help you with the trust. And even if you have a family attorney or one on retainer that has no trust experience, look for someone else to handle this aspect of your legal affairs.

Questions to Ask Your Attorney

What questions should you ask when shopping around? Try the following:

- ***How many trusts have you handled in the last five years?***
You want someone who is up to date on regulations. If you are an attorney’s first trust client, or even the second, you’ll probably want to shop further.
- ***Have you handled clients with estates the size of mine?***
This is important if your estate is valued in the million-dollar range. Some attorneys may only have handled smaller estates; this does not mean you can’t use such a person—it’s just something for you to keep in mind.

HINT: Attorney fees can be much higher for Living Trusts than for those charged to draft a will. You may be able to lower those fees considerably with good advance planning and by completing documents that help you toward the final package.

- ***Will you handle my case personally?***

This question is particularly appropriate for attorneys at larger law firms. You may be paying a big name to handle your estate, only to discover that most of the actual legal work might be done by associate attorneys or, by the firm’s paralegals. And while there’s nothing wrong with assistants submitting forms and handling lesser matters, make sure the attorney you are paying will be available when needed.

- ***How much do you charge?***

This is, of course, the big question. It is also an area where you may well receive an incomplete reply. Once the attorney gives you an amount, follow up with:

- ***What services does the amount you just quoted include?***

You ask this question because some attorneys may quote you a partial price. Perhaps the fee includes your initial consultation and one or two follow - up visits, but not the documents your attorney will “discover” must be filed during those visits. Some attorneys charge fixed rates; other attorneys work by the hour. Ask about “hidden” fees, such as photocopying, postage, and typing expenses. Most attorneys are fair,

but there are those who will charge for anything they can get away with. Expect to pay a retainer fee; also expect the cost to be higher if you are setting up a specialized trust arrangement—e.g., an insurance trust or A-B-C trust for a large estate.

NOTES: Many people claim to be financial advisors. Some have adequate credentials; others don’t. If you choose a financial planner over an accountant, ask for proof of certification to make sure the planner is properly trained.



HINT: Ask family, friends, and neighbors with trusts who they recommend. You may also be able to get the name of a competent attorney from your bank.

Some banks have trust departments with their own advisors who will review your financial situation and make recommendations—for a small fee. They can probably look over the net worth estimates you have prepared, along with your Schedule of Assets, and tell if your estate planning is headed in the right direction.

If your bank does not these services, you might consider meeting with an accountant. Have the accountant work with you to prepare your net worth statement and Schedule of Assets—it’s the best way to ensure that these things get done right. Regardless of whether it’s the bank advisor or your accountant, these meeting should take place **BEFORE** you meet with your attorney to ensure your estate is in order.

NOTES: The main thing an attorney will do is fit your trust to meet your needs. However, there may be certain clauses specific to your property that should be included as well. An attorney will translate these clauses into legalese and add them to the general forms.



As mentioned earlier, you should also get all your documents together and discuss things with your family before you see an attorney. Make copies of your forms and fill them out the way you intend to fill out the final versions. You can show these to your attorney and have any mistakes corrected.

NOTES: The main thing an attorney will do is fit your trust to meet your needs. The forms your will use contain generalized language which, in most situations, will be enough to protect your estate. However, there may be certain clauses specific to your property that should be included as well. An attorney will translate these clauses into legalese and add them to the general forms.



Your attorney should review every trust document before you sign. Don't expect to finish things in one or two visits. You may well need one or more initial consultations, after which you may be called back to sign the final documents. Even the least complicated trusts normally take one to two months to get filed.

NOTES: Express to your attorney your desire to make informed decisions, especially in terms of planning for your family's financial future. A knowledgeable attorney will welcome a client who already knows something about trusts, as it will save him or her a lot of time having to explain the basics.



Do You Need a Will?

Because of the fees involved, some attorneys may recommend a will instead of a trust. Numerous documents must be drawn up as part of the probate process. Military affidavits must be filed; notices to creditors must be published in newspapers; relatives must be notified and must return legal forms to the attorney's office; there are complicated estate tax forms to deal with, all of which earn the attorney fees.

Attorneys usually earn far less for helping a client form a trust, as a trust may be administered largely without legal assistance. Examine the cost of a trust vs. a will, and then ask for what specific advantages you gain by preparing a will.

HINT: Those who benefit most from having a will are single persons with smaller estates and no legal dependents. If this describes you and your attorney recommends a will instead, consider it. Otherwise, a trust probably makes more sense for you financially.

You Know Best

Also keep in mind that you are the one who best knows your family's needs. So if an attorney tries to push you in a direction that makes you uncomfortable—a financial arrangement that will affect your children's or grandchildren's futures in a major way, for example—don't hesitate to get a second opinion.

Married couples should note that in some cases the government will reward your financial planning efforts with a special tax break. (Unfortunately this does not yet apply to single persons.) Ask your attorney for a signed receipt showing that you have put together an A-B or A-B-C trust. If a professional does your tax forms for you, ask that the tax break be noted directly on the tax form. If you do the form yourself, write a note and put it in with your other tax documents so that when it is time to file taxes you'll remember to list your trust in the deduction section and take off money accordingly. That alone makes forming a trust worth the effort.

STOP! Check with your attorney from time to time regarding changes in trust regulations that could affect your estate. Do not depend on your attorney to get in touch with you. Often lawyers have many more clients than they are able to keep track of, so the communication process will be your responsibility.

HINT: Make copies of all forms you sign. Put the signed original in a safe place to ensure that you don't lose it and to protect it from natural disasters.

Chapter 6: CHANGING YOUR TRUST

This section answers the questions:

- How do you change/amend a trust?
- What's the best way to keep track of current trust documents?
- What's a *trust notebook*?
- What's the Amendment to Trust form?
- Can you end a trust?

Forming your revocable living trust takes only a month or two; maintaining it is a lifelong process. Which is why it's important to know the status of your trust at all times and to make changes as necessary.

The responsibility for trust maintenance falls to you, the grantor, and your co-trustees. Once a year review any changes that may have occurred. Just as you would not store your possessions in a safe without unlocking it and taking a peek inside every now and then, you should not neglect the assets in your trust.

NOTES: Your successor trustees should ask any questions they have about the trust now, while you are still living. This will avoid unnecessary confusion later.



Maintaining Accurate Records

NOTES: One of the most important duties of a trustee is to maintain accurate, up-to-date financial records. The grantor plays a role in this. If you purchase an item after the trust has been formed and want to add that item to the trust, list the trust as owner on the bill of sale. This is how any personal items will be added to the trust. In addition, you must list each asset you purchase on your Schedule of Assets, giving a full description of the item and its location.



If you buy stock after the trust is formed, put the trust's name on the certificates. Real estate deeds for any property you purchase also need to be owned by the trust.

If you sell a trust asset, this modification should be noted as well. Fill out an Assignment of Property form for each item you sell, listing the trust as the seller and transferring title to the new owner. Keep the receipts from all trust asset sales. Also officially delete the item from your Schedule of Assets and note the date, so that your successor trustee does not think the item is still part of the trust. You have to be scrupulous about your record keeping. If you add to or sell something from your estate, don't put off noting the change in your records.

STOP! Do not leave anything of value out of your trust. Remember, if you leave it out, your estate may be subject to probate.

HINT: It is wise to review your trust at tax time. Although your taxes will not be affected by a revocable Living Trust, tax time is when most people stop to take a look at their finances, so it is a good time to pull out your trust documents for review as well. If you need to make any modifications, do so immediately.

What's a Trust Notebook?

Many people find it handy to set up a trust notebook. This is a loose-leaf binder in which you put copies of all trust-related documents so that they are all in one place.

HINT: Divide your trust notebook into three sections: Legal Documents, Bills of Sale, and Letters of Instruction. The first section, *Legal Documents*, should contain the revocable Living Trust, Certificate of Trustees' Powers, Schedule of Assets, and Assignment of Property to Trust forms. It should also include any amendments used to modify the trust, as will be discussed later in this chapter.

The *Bills of Sale* section contains proof of ownership for those items purchased after the original trust agreement was formed. Bills of Sale for newly purchased items and receipts for those assets you sell will go here. Copies of deeds, stock certificates, and insurance policies should go here as well. (The originals of these items should be placed in your safe deposit box.)

The third section, *Letters of Instruction*, contains your letter to your successor trustee, telling him or her who to contact about specific trust assets when you die. Your trustee need not notify any probate court or federal agency upon your death. However, the trustee must contact your stock broker, mortgage company, and insurance company about transferring or selling your assets, or to handle some other matters. Your Letter of Instruction provides a handy framework for the trustee during this process.

NOTES: Remember, You don't have to put everything you own into a trust, especially if you are concerned about maintaining all the records.



Often your attorney can draw up such a letter for you. You may also leave a letter requesting that your successor trustee call your attorney and get full instructions on what to do upon your death.

HINT: Consider keeping some things out of the trust, for example the car you drive and other personal property, to cut down on record-keeping. Then, use a will to bequeath all assets not in your trust.

Healthcare-related documents also go in the third section of your trust notebook. These include your Durable General Power of Attorney, Durable Power of Attorney for Healthcare and Directive to Physicians. Remember to send copies of all these forms to your healthcare agencies so they will have them on file. Your attorney and designated conservator/trustee also get copies. Some people with strong religious convictions give a copy to their clergy as well, so their clergy may reassure family members that this truly was what the grantor wanted.

Once you have put your trust notebook together, find a safe place for it in your house. Make sure all family members know where it is. If for any reason the notebook or some of the documents get destroyed, replace them immediately.

HINT: Your trust notebook will be your handiest reference to the status of your trust so keep it up-to-date. It will be your handiest reference to the status of your trust.

How Do You Change Your Trust?

Sometimes events occur that make it necessary to amend a trust agreement. You may outlive your successor trustee, for example, or that person could become mentally or physically incapacitated and unable to preside over the trust. You may also outlive or have a falling out with one or more of your beneficiaries.

NOTES: As grantor, you retain the right during your lifetime to appoint and fire trustees as you see fit; a trustee may not object to your removing him or her from the trust agreement. (Exception: if you have made your spouse co-trustee, it will be difficult to remove him or her from the trust agreement without terminating the



To change a trustee or beneficiary, attach an amendment to your revocable Living Trust. (Specific directions for wording such an amendment may be found in the back of this guide.) Staple all such amendments to the front of the trust so they may easily be seen. You must also file the amendment at the county recorder's office where you filed your original Certificate of Trustees' Powers.

A trustee may also choose to resign, in which case you will have to appoint someone to take his or her place. An amendment is easy to file at any time, as long as you are of sound mind.

Occasionally it becomes necessary to amend the trust to include new conditions.

Always have your attorney draw up such an amendment to ensure it is properly worded. The amendment will then be stapled to the revocable Living Trust, dated, and numbered to show which part of the agreement it pertains to.

If you want to delete something from your trust agreement, use the Amendment to Trust form provided in this guide. Fill in the number of the paragraph you want to delete from the revocable living trust. Check with your attorney to make sure it is done correctly.

You may also use the Amendment to Trust form to change the wording of a paragraph. State the number of the paragraph you want to delete; then state that you are substituting the following new paragraph in its place, and write out the new paragraph.

Most changes require the approval of all co-trustees. This is one reason for choosing co-trustees you know well.

How Do You End a Trust?

Although a revocable Living Trust provides the best of all worlds, situations occur when you may need to terminate your agreement. Divorce is one of the most common situations. Consult your attorney immediately if you have a trust and your marriage is ending, particularly if your spouse is co-trustee. This is especially important in community property states, where a judge will assume all property included in trust to be community property unless you and your spouse immediately form separate trusts.

NOTES: If you are changing language contained in the Certificate of Trustees' Powers, you must file the amendment with the county recorder's office where the original certificate is filed; otherwise, simply staple the Amendment to Trust form to the revocable Living Trust.



NOTES: If it becomes necessary to terminate the trust after your death, a surviving grantor or successor trustee may transfer all property from the trust using the Assignment of Property form and file a Revocation of Trust. However, this only empties the trust—it does not really end it according to established legal terms. Every party involved in the trust must approve its revocation for the trust to end when a grantor is no longer living. A probate judge must then review the reasons for the termination. If the judge believes that ending the trust will not conflict with the grantor's intentions, the request is approved and an order terminating the trust is issued. The order is then attached to the revocable Living Trust.



The only way to end a trust officially is to file a Revocation of Trust and record it in your county recorder's office. You must officially file the Revocation of Trust as proof that your trust no longer legally exists.

Once you die, the trust becomes irrevocable and changing trustees or beneficiaries is more complex. If your successor trustee dies, becomes incompetent or chooses to resign his or her duties, an Affidavit of Succession stating a new trustee has assumed those duties must be filed at the county recorder's office. Proof of death or notes from physicians confirming incompetence must be attached to the affidavit.

NOTES: Filing a new will does not end your trust; neither does transferring the assets back into your own name.



In reality there are few situations where such formal termination is needed. Usually a trust automatically ends when all of its assets have been distributed to the beneficiaries by the successor trustees. Always consult an attorney before legally ending a trust; there may be options available allowing you to hold it together.

NOTES: With a little work on your part, your trust can protect all that you have worked for and guarantee that it will go to those you love



Chapter 7: SCHEDULING YOUR TRUST

This section answers the questions:

- What steps should you take to create your trust?
- Why is it important to contact your local Registry of Deeds?
- Who should you provide copies of your trust agreement documents?
- What paperwork should you provide to your health care providers?
- What other special circumstances should you consider?
- What are the duties of the successor trustee?

You may feel a bit overwhelmed by the work involved in forming and maintaining a Living Trust. Keep in mind, most of the work takes place over a long period of time, allowing you to think through what you are doing and avoid mistakes. While you want to set up your trust as quickly as possible, you do not need to rush this process.

What Steps Should You Take

The following checklist will help you remember all the steps you need to take. If it takes you a little longer to form your trust, don't worry. The important thing is that you are taking the time and the initiative to set up your trust.

Week 1

Sit down with your family to discuss their present and future financial needs and how your trust might be able to provide for them. Decide who will get what, who will act as your co- and successor trustees, which charities you are leaving your money to, who will make your healthcare decisions, and who will act as guardians for your minor children.

Locate important documents such as deeds, stock certificates, insurance policies, copyrights, and car registrations.

HINT: Consider who you will choose as your trust attorney. Ask friends and relatives with trusts for references if necessary.

Week 2

Draw up your preliminary Schedule of Assets. Include all your money, real estate, intangibles, insurance payable to the estate, and personal property; single persons should include their cars. Subtract mortgages, debts, liens, and other liabilities to estimate your estate's net worth. List each asset's physical description, location, type of ownership, what it does, and what it's worth. Get items appraised if their present value is questionable.

Make copies of the trust documents provided in this guide. Fill them in the way you think you want the trust agreement to read; place with other legal documents to take to your attorney's office.

HINT: Ask your accountant or an accredited financial planner to double-check your Schedule of Assets and net worth estimate.

Week 3

Meet with bank officials to set up a separate trust account (if finances exceed probate limit). Get a safe deposit box. If an advisor is available to you, ask for advice on your Schedule of Assets and estimated net worth.

Meet with a trust attorney and ask about fees and other issues. If you feel comfortable working with the attorney, show him or her the documents you have filled out so far. Ask what other documents you must bring to the next meeting. Also inquire about the marital tax deduction for setting up an A-B or A-B-C Living Trust.

Week 4

NOTES: Call your local Registry of Deeds for filing requirements and fees. (Your attorney may or may not handle this.) Contact your stock broker about transferring title to the trust for all stocks and bonds



If you have an outstanding mortgage, notify your lender of your intentions to form the trust. Call your insurance agent and fill him or her in about the trust; ask if any special arrangements need to be made.

Week 5

Purchase a sturdy loose-leaf notebook to hold documents. Set up sections according to instructions in Chapter 6 (or whatever set-up works best for you and your family).

Meet with your attorney to sign and notarize all legal documents. Put originals in your safe deposit box; keep copies in the loose-leaf notebook.

Week 6

Send copies of your Certificate of Trustees' Powers to your county recorder if your attorney has not already done so. Send copies of all trust agreement documents to your family, beneficiaries, co-trustees, and successor trustees. Send copies of your Durable Power of Attorney for Healthcare and Directive to Physicians to all healthcare agencies you use. If applicable, consider giving a copy to your clergy, too.

HINT: Call each agency for the name of the proper contact person; check back to make sure the documents are received and have been put in your file.

Week 7

Go through your trust notebook with your family; explain what everything is and answer any questions.

Review the distribution of property with your successor trustees and make sure you all have the same understanding of how property will be distributed after your death. Discuss the tax forms to be filed and other legalities; ask your successor trustees to contact your attorney with any questions.

A Yearly Review

Review additions to and deletions from the trust with your co- and successor trustees. Discuss any plans that may affect trust property and also bring up any changes in the family situation or new amendments to the agreement that will affect property distribution.

Review Daily

If you buy something for or sell something from the trust, file a Bill of Sale or Assignment of Property form in your trust notebook. Add all new property to your Schedule of Assets; delete sold property.

Special Circumstances

- ***If you file for divorce***
Speak to your attorney immediately about ending a trust that is jointly held with your spouse, especially if you live in a community property state.
- ***If you need to amend the trust***
Call your attorney to get the correct wording. Staple the new amendment to the front of the Revocable Living Trust; also send a copy to your county recorder's office where the Certificate of Trustees' Powers is registered.
- ***If you must appoint a new trustee***
File an amendment with your county recorder's office; staple the amendment to the front of the Revocable Living Trust.

- ***Appointing a new trustee when grantor is no longer living***
File an Affidavit of Succession with the county recorder's office; staple it to the front of the Revocable Living Trust.
- ***Disinheriting a child as a beneficiary***
Give a signed note to your attorney stating your reasons for disinheritance.
- ***Changing conservators or healthcare decision makers***
File a new Durable General Power of Attorney, Durable Power of Attorney for Healthcare and Directive to Physicians; file an Amendment to Trust to change the conservator; make certain all healthcare agencies and other parties get a copy.
- ***Ending a trust while the grantor is still living***
See your attorney; file a Revocation of Trust to make it official.
- ***Ending a trust when grantor is no longer living***
A judge must approve the reasons for the revocation.

Successor Trustees Duties

- Refer to the Letter of Instruction provided by grantor; call the trust attorney if necessary.
- Notify insurance firms, banks, stock brokers, mortgage lenders; check on IRA or veteran's benefits, if applicable; also check on Social Security benefits.
- Transfer title of bank accounts and other property to successor trustee (stop credit cards if in grantor's name alone).
- Review and pay all debts owed by grantor.
- Contact beneficiaries and distribute property.
- Get a separate tax ID number for A-B and A-B-C Trusts; file estate tax and other forms within one year of taking over as the successor trustee.

Chapter 8: STAYING SMART ABOUT TAKING ACTION

This section answers the following:

- What's the best way to lower your legal expenses?
- When should you hire an attorney?
- What elements should you consider before taking legal action?
- How do you determine what attorney is right for you?
- Where should you go to find an attorney?
- What should you consider before hiring your attorney?

Being Smart About Your Legal Fees

Everyday, millions of people consider hiring an attorney to help in legal matters like: get agreements in writing, protect themselves from lawsuits, or documenting business transactions. Unfortunately these important matters are often neglected because legal advice can be expensive.

Responding to the overwhelming demand for affordable legal protection and services, there are now specialized clinics that process simple documents. In addition, many paralegals freelance to help people prepare legal claims. Now more than ever, people are taking the initiative to handle their own legal affairs with do-it-yourself legal guides and kits

When are these alternatives to a lawyer appropriate? If you hire an attorney, how can you make sure you're getting good advice for a reasonable fee? Most importantly, do you know how to lower your legal expenses?

Understanding When You Need an Attorney

Make no mistake: serious legal matters require a lawyer. The tips in this book can help you reduce your legal fees, but there is no alternative to good professional legal services in certain circumstances:

- when you are charged with a felony, you are a repeat offender, or jail is possible
- when a substantial amount of money or property is at stake in a lawsuit
- when you are a party in an adversarial divorce or custody case
- when you are an alien facing deportation
- when you are the plaintiff in a personal injury suit that involves large sums of money
- when you're involved in very important transactions

Questions to Consider Before Legal Action

Consider the following questions before you pursue legal action:

What are your financial resources?

Money buys experienced attorneys, and experience wins over first-year lawyers and public defenders. Even with a strong case, you may save money by not going to court. Yes, people win millions in court. But for every big winner there are ten plaintiffs who either lose or win so little that litigation wasn't worth their effort.

Do you have the time and energy for a trial?

Courts are overbooked, and by the time your case is heard your initial zeal may have grown cold. If you can, make a reasonable settlement out of court. On personal matters, like a divorce or custody case, consider the emotional toll on all parties. Any legal case will affect you in some way. You will need time away from work. A newsworthy case may bring press coverage. Your loved ones, too, may face publicity. There is usually good reason to settle most cases quickly, quietly, and economically.

How can you settle disputes without litigation?

Consider *mediation*. In mediation, each party pays half the mediator's fee and, together, they attempt to work out a compromise informally. *Binding arbitration* is another alternative. For a small fee, a trained specialist serves as judge, hears both sides, and hands down a ruling that both parties have agreed to accept.

How Do You Determine What Attorney is Right for You?

Having done your best to avoid litigation, if you still find yourself headed for court, you will need an attorney. To get the right attorney at a reasonable cost, be guided by these four questions:

What type of case is it?

You don't seek a foot doctor for a toothache. Find an attorney experienced in your type of legal problem. If you can get recommendations from clients who have recently won similar cases, do so.

Where will the trial be held?

You want a lawyer familiar with that court system and one who knows the court personnel and the local protocol—which can vary from one locality to another.

Should you hire a large or small firm?

Hiring a senior partner at a large and prestigious law firm sounds reassuring, but chances are the actual work will be handled by associates—at high rates. Small firms may give your case more attention but, with fewer resources, take longer to get the work done.

What can you afford?

Hire an attorney you can afford, of course, but know what a fee quote includes. High fees may reflect a firm's luxurious offices, high-paid staff and unmonitored expenses, while low estimates may mean "unexpected" costs later. Ask for a written estimate of all costs and anticipated expenses.

What the Best Way to Find an Attorney?

Whether you need an attorney quickly or you're simply open to future possibilities, here are seven nontraditional methods for finding your lawyer:

- 1) **Word of mouth:** Successful lawyers develop reputations. Your friends, business associates and other professionals are potential referral sources. But beware of hiring a friend. Keep the client-attorney relationship strictly business.
- 2) **Directories:** The Yellow Pages and the Martin-Hubbell Lawyer Directory (in your local library) can help you locate a lawyer with the right education, background and expertise for your case.
- 3) **Databases:** A paralegal should be able to run a quick computer search of local attorneys for you using the Westlaw or Lexis database.
- 4) **State bar associations:** Bar associations are listed in phone books. Along with lawyer referrals, your bar association can direct you to low-cost legal clinics or specialists in your area.
- 5) **Law schools:** Did you know that a legal clinic run by a law school gives law students hands-on experience? This may fit your legal needs. A third-year law student loaded with enthusiasm and a little experience might fill the bill quite inexpensively—or even for free.
- 6) **Advertisements:** Ads are a lawyer's business card. If a "TV attorney" seems to have a good track record with your kind of case, why not call? Just don't be swayed by the glamour of a high-profile attorney.
- 7) **Your own ad:** A small ad describing the qualifications and legal expertise you're seeking, placed in a local bar association journal, and may get you just the lead you need.

What Should You Consider Before Hiring Your Attorney?

No matter how you hear about an attorney, you must interview him or her in person. Call the office during business hours and ask to speak to the attorney directly. Then explain your case briefly and mention how you obtained the attorney's name. If the attorney sounds interested and knowledgeable, arrange for a visit.

10 Tips to Evaluating Your Attorney

- 1) Note the address. This is a good indication of the rates to expect.
- 2) Note the condition of the offices. File-laden desks and poorly maintained work space may indicate a poorly run firm.
- 3) Look for up-to-date computer equipment and an adequate complement of support personnel.
- 4) Note the appearance of the attorney. How will he or she impress a judge or jury?
- 5) Is the attorney attentive? Does the attorney take notes, ask questions, follow up on points you've mentioned?

- 6) Ask what schools he or she has graduated from, and feel free to check Credentials with the state bar association.
- 7) Does the attorney have a good track record with your type of case?
- 8) Does he or she explain legal terms to you in plain English?
- 9) Are the firm's costs reasonable?
- 10) Will the attorney provide references?

Put it in Writing

Having chosen your attorney, make sure all the terms are agreeable. Send letters to any other attorneys you have interviewed, thanking them for their time and interest in your case and explaining that you have retained another attorney's services.

Request a letter from your new attorney outlining your retainer agreement. The letter should list all fees you will be responsible for as well as the billing arrangement. Did you arrange to pay in installments? This should be noted in your retainer agreement.

Controlling legal costs

Legal fees and expenses can get out of control easily, but the client who is willing to put in the effort can keep legal costs manageable. Work out a budget with your attorney. Create a timeline for your case. Estimate the costs involved in each step.

Legal fees can be straightforward. Some lawyers charge a fixed rate for a specific project. Others charge contingency fees (they collect a percentage of your recovery, usually 35-50 percent if you win and nothing if you lose). But most attorneys prefer to bill by the hour. Expenses can run the gamut, with one hourly charge for taking depositions and another for making copies.

Have your attorney give you a list of charges for services rendered and an itemized monthly bill. The bill should explain the service performed, who performed the work, when the service was provided, how long it took, and how the service benefits your case.

Ample opportunity abounds in legal billing for dishonesty and greed. There is also plenty of opportunity for knowledgeable clients to cut their bills significantly if they know what to look for. Asking the right questions and setting limits on fees is smart and can save you a bundle. Don't be afraid to question legal bills. It's your case and your money!

When the bill arrives

- **Retainer fees:** You should already have a written retainer agreement. Ideally, the retainer fee applies toward case costs, and your agreement puts that in writing. Protect yourself by escrowing the retainer fee until the case has been handled to your satisfaction.
- **Office visit charges:** Track your case and all documents, correspondence, and bills. Diary all dates, deadlines and questions you want to ask your attorney during your next office visit. This keeps expensive office visits focused and productive, with more accomplished in less time. If your attorney charges less for phone consultations than office visits, reserve visits for those tasks that must be done in person.

- **Phone bills:** This is where itemized bills are essential. Who made the call, who was spoken to, what was discussed, when was the call made, and how long did it last? Question any charges that seem unnecessary or excessive (over 60 minutes).
- **Administrative costs:** Your case may involve hundreds, if not thousands, of documents: motions, affidavits, depositions, interrogatories, bills, memoranda, and letters. Are they all necessary? Understand your attorney's case strategy before paying for an endless stream of costly documents.
- **Associate and paralegal fees:** Note in your retainer agreement which staff will have access to your file. Then you'll have an informed and efficient staff working on your case, and you'll recognize their names on your bill. Of course, your attorney should handle the important part of your case, but less costly paralegals or associates may handle routine matters more economically.

NOTES: Some firms expect their associates to meet a quota of billable hours, although the time spent is not always warranted. Review your bill. Does the time spent make sense for the document in question? Are several staff involved in matters that should be handled by one person? Don't be afraid to ask questions. And withhold payment until you have satisfactory answers



- **Court stenographer fees:** Depositions and court hearings require costly transcripts and stenographers. This means added expenses. Keep an eye on these costs.
- **Copying charges:** Your retainer fee should limit the number of copies made of your complete file. This is in your legal interest, because multiple files mean multiple chances others may access your confidential information. It is also in your financial interest, because copying costs can be astronomical.
- **Fax costs:** As with the phone and copier, the fax can easily run up costs. Set a limit.
- **Postage charges:** Be aware of how much it costs to send a legal document overnight, or a registered letter. Offer to pick up or deliver expensive items when it makes sense.

- **Filing fees:** Make it clear to your attorney that you want to minimize the number of court filings in your case. Watch your bill and question any filing that seems unnecessary.
- **Document production fee:** Turning over documents to your opponent is mandatory and expensive. If you're faced with reproducing boxes of documents, consider having the job done by a commercial firm rather than your attorney's office.
- **Research and investigations:** Pay only for photographs that can be used in court. Can you hire a photographer at a lower rate than what your attorney charges? Reserve that right in your retainer agreement. Database research can also be extensive and expensive; if your attorney uses Westlaw or Nexis, set limits on the research you will pay for.
- **Expert witnesses:** Question your attorney if you are expected to pay for more than a reasonable number of expert witnesses. Limit the number to what is essential to your case.

- **Technology costs:** Avoid videos, tape recordings, and graphics if you can use old-fashioned diagrams to illustrate your case.
- **Travel expenses:** Travel expenses for those connected to your case can be quite costly unless you set a maximum budget. Check all travel-related items on your bill, and make sure they are appropriate. Always question why the travel is necessary before you agree to pay for it.
- **Appeals costs:** Losing a case often means an appeal, but weighs the costs involved before you make that decision. If money is at stake, do a cost-benefit analysis to see if an appeal is financially justified.
- **Monetary damages:** Your attorney should be able to help you estimate the total damages you will have to pay if you lose a civil case. Always consider settling out of court rather than proceeding to trial when the trial costs will be high.
- **Surprise costs:** Surprise costs are so routine they're predictable. The judge may impose unexpected court orders on one or both sides or the opposition will file an unexpected motion that increases your legal costs. Budget a few thousand dollars over what you estimate your case will cost. It usually is needed.
- **Padded expenses:** Assume your costs and expenses are legitimate. But some firms do inflate expenses — office supplies, data base searches, copying, postage, and phone bills— to bolster their bottom line. Request copies of bills your law firm receives from support services. If you are not the only client represented on a bill, determine those charges related to your case.

Keeping it legal without a lawyer

The best way to save legal costs is to avoid legal problems. There are hundreds of ways to decrease your chances of lawsuits and other nasty legal encounters. Most simply involve a little common sense. You can also use your own initiative to find and use the variety of self-help legal aid available to consumers.

11 situations in which you may not need a lawyer

- 1) **No-fault divorce:** Married couples with no children, minimal property, and no demands for alimony can take advantage of divorce mediation services. A lawyer should review your divorce agreement before you sign it, but you will have saved a fortune in attorney fees. A marital or family counselor may save a seemingly doomed marriage, or help both parties move beyond anger to a calm settlement. Either way, counseling can save you money.
- 2) **Wills:** Do-it-yourself wills and living trusts are ideal for people with estates of less than \$600,000. Even if an attorney reviews your final documents, a will kit allows you to read the documents, ponder your bequests, fill out sample forms, and discuss your wishes with your family at your leisure, without a lawyer's meter running.
- 3) **Incorporating:** Incorporating a small business can be done by any business owner. Your state government office provides the forms and instructions necessary. A visit to your state office will probably be necessary to perform a business name check. A fee of \$100-\$200 is usually charged for processing your Articles of Incorporation. The rest is

paperwork: filling out forms correctly; holding regular, official meetings; and maintaining accurate records.

- 4) **Routine business transactions:** Copyrights, for example, can be applied for by asking the U.S. Copyright Office for the appropriate forms and brochures. The same is true of the U.S. Patent and Trademark Office. If your business does a great deal of document preparation and research, hire a certified paralegal rather than paying an attorney's rates. Consider mediation or binding arbitration rather than going to court for a business dispute. Hire a human resources / benefits administrator to head off disputes concerning discrimination or other employee charges.
- 5) **Repairing bad credit:** When money matters get out of hand, attorneys and bankruptcy should not be your first solution. Contact a credit counseling organization that will help you work out manageable payment plans so that everyone wins. It can also help you learn to manage your money better. A good company to start with is the Consumer Credit Counseling Service, 1-800-388-2227.
- 6) **Small Claims Court:** For legal grievances amounting to a few thousand dollars in damages, represent yourself in Small Claims Court. There is a small filing fee, forms to fill out, and several court visits necessary. If you can collect evidence, state your case in a clear and logical presentation, and come across as neat, respectful and sincere, you can succeed in Small Claims Court.
- 7) **Traffic Court:** Like Small Claims Court, Traffic Court may show more compassion to a defendant appearing without an attorney. If you are ticketed for a minor offense and want to take it to court, you will be asked to plead guilty or not guilty. If you plead guilty, you can ask for leniency in sentencing by presenting mitigating circumstances. Bring any witnesses who can support your story, and remember that presentation (some would call it acting ability) is as important as fact.
- 8) **Residential zoning petition:** If a homeowner wants to open a home business, build an addition, or make other changes that may affect his or her neighborhood, town approval is required. But you don't need a lawyer to fill out a zoning variance application, turn it in, and present your story at a public hearing. Getting local support before the hearing is the best way to assure a positive vote; contact as many neighbors as possible to reassure them that your plans won't adversely affect them or the neighborhood.
- 9) **Government benefit applications:** Applying for veterans' or unemployment benefits may be daunting, but the process doesn't require legal help. Apply for either immediately upon becoming eligible. Note: If your former employer contests your application for unemployment benefits and you have to defend yourself at a hearing, you may want to consider hiring an attorney.
- 10) **Receiving government files:** The Freedom of Information Act gives every American the right to receive copies of government information about him or her. Write a letter to the appropriate state or federal agency, noting the precise information you want. List each document in a separate paragraph. Mention the Freedom of Information Act, and state that you will pay any expenses. Close with your signature and the address the documents should be sent to. An approved request may take six months to arrive. If it is refused on the grounds that the information is classified or violates another's privacy, send a letter of appeal explaining why the released information would not endanger anyone. Enlist the support of your local state or federal representative, if possible, to smooth the approval process.

- 11) **Citizenship:** Arriving in the United States to work and become a citizen is a process tangled in bureaucratic red tape, but it requires more perseverance than legal assistance. Immigrants can learn how to obtain a “Green Card,” under what circumstances they can work, and what the requirements of citizenship are by contacting the Immigration Services or reading a good self-help book.

Chapter 9: TERMS, RESOURCES & RELATED INFORMATION

This section answers the following:

- How do I make sense of the language and terms in a Living Trust?
- What websites can I visit to get more information on Living Trusts and estate planning?
- Where are some legal search engines?
- Where do I contact the bar association in my state?

Glossary of Terms

A Trust

A single trust normally used by individuals and couples who have less than the Unified Tax Credit Exemption.

A-B Trust

A joint trust normally used by couples with between the single and the couple Unified Tax Credit Exemption.

A-B-C Trust

A second type of joint trust normally used by married couples whose estates exceed the maximum Unified Tax Credit Exemption, or who have children from previous marriages.

Affidavit of Succession

Filed when the grantor is no longer living and it is necessary to replace the successor trustee with a new trustee; must be filed with the county recorder.

Appreciation

The growth in value of property over time.

Asset

Property of value placed in trust.

Assignment of Property

The forms used to transfer title of property to a trust.

Beneficiary

A person who inherits property from an estate.

Certified Copy

A copy of a document with an official seal.

Certificate of Trustees' Powers

A document stating the powers of a grantor's appointed trustee(s) to buy, sell, lease, invest and otherwise manage trust property.

Commingled Funds

(1) When a grantor's personal funds get mixed in by mistake with trust funds; to be avoided at all costs. (2) When a husband and wife put their money in one account.

Community Property

A valid legal concept in nine states; all property earned by either the husband or wife during a marriage is automatically joint property.

Conservator

The person appointed to look after an adult who is unable to look after him or herself.

Contingent Beneficiary

Person named to receive property from an estate if the first-choice beneficiary is no longer living when property is distributed.

Co-Trustee

A second person entrusted with property for the benefit of others.

Creditor

A party to whom money is owed.

Curtesy State

One of several states in which a wife is required to leave at least one third of her property to her husband.

Directive to Physicians

A document that states how life support decisions should be handled if one is incapacitated.

Disinterested Trustee

An attorney, accountant or other professional who manages an estate; someone objective about financial and legal matters regarding a trust; often appointed along with a family member as successor trustees.

Dower State

One of several states that require a husband to leave at least a third of his property to his wife.

Durable General Power of Attorney

Gives another person the right to act on the grantor's behalf if the grantor becomes unable to make his or her own decisions.

Durable Healthcare Power of Attorney

Gives another person the right to make healthcare decisions for the grantor if the grantor becomes unable to speak for him or herself.

Estate Tax

Taxes charged to an estate over the Unified Tax Credit Exemption when its grantor is no longer living; may often be avoided by setting up a trust.

Executor/Executrix

The person appointed to manage an estate when a will is involved. Usually referred to as the personal representative.

Fixed Rate

One set fee for services rendered, rather than charging by the hour.

Grantor

The person who puts his or her property in trust; also known as the trustor.

Guardian

The person(s) appointed to look after minor children upon the death of the parent(s).

Insurance Trust

A specialized trust holding insurance policies or their proceeds.

Intangibles

Items of value that can't be physically touched—e.g., copyrights, patents and credit.

Joint Property

Property owned by two or more people.

Letter of Instruction

A letter from the grantor or grantor's attorney to the successor trustee(s) with instructions on what to do upon the grantor's death.

Living Trust

A legal arrangement whereby a person owning property (grantor) transfers title to a second person (trustee) for the benefit of a third person (beneficiary).

Net Worth

A person's total assets minus debts.

Notary Public

A person authorized to witness the signing of documents, verify that the signatures are genuine, and state that a document was actually signed on the reported date.

Planned Giving Officer

The person at a charitable institution who helps people make bequests to the organization. Smaller nonprofits may use a Development Officer to handle this.

Pour-Over Will

A document stating that all assets accidentally left out of trust when the grantor is no longer living should go into the trust. Anything in a pour-over will must go through probate.

Probate

The complicated process of administering a will; this may be avoided by forming a Living Trust. Probate is necessary for estates without trusts when there is more than \$30,000 in property or \$10,000 in real estate.

Retainer Fee

The fee paid to an attorney to guarantee that he or she will represent you.

Revocable Living Trust

The main document of a trust agreement; states an individual's intent to form a trust and names the parties involved.

Schedule of Assets

A list of all property to be kept in trust; includes each item's location, type of ownership, function, and worth.

Separate Property

Property purchased or inherited previous to a marriage in a community property state. If it is commingled with community property, it becomes community property.

Successor Trustees

The persons who take over management of a trust when the grantor is no longer living, and/or when the original trustee is no longer able to serve.

Termination of Trust Affidavit

Document a grantor files with the county recorder in order to end a trust. An attorney should be consulted.

Testamentary Trust

A trust that goes into effect after the grantor dies. Unlike a Living Trust, a testamentary trust does not protect an estate from probate.

Totten Trust

A bank account trust which bypasses probate and goes directly to the beneficiary upon the grantor's death.

Trustee

The person who takes title to property and manages a trust; this person may also be the grantor. If two people serve as co-trustees of a trust, both parties must approve all decisions.

Trust Notebook

The book in which an organized grantor keeps all forms and documents related to trust property.

Uniform Probate Code

A law that requires persons who live in certain states to record their trusts.

Unlimited Marital Deduction

Exempts an estate from having to pay estate taxes when the first spouse dies, if everything is left to the surviving spouse. The estate must pay a tax when the second spouse dies unless an A-B or A-B-C Living Trust is in place and the total estate is less than the Unified Tax Credit Exemption.

The second spouse may help to ensure that the trust meets this limit by giving away money during his or her lifetime

Living Trust Sites

Visit one of the websites below for more information on wills

- ABA Law Practice Management Section — Estate Planning and Probate Interest Group
URL: <http://www.abanet.org/lpm/lpdiv/estate.html>
- American Academy of Estate Planning Attorney, Inc.
URL: <http://www.aaepa.com>
- American Association of Retired Persons Workplace
URL: <http://www.aapr.org/getans/consumer/wills.html>
- California Estate Planning, Probate & Trust Law
URL: <http://www.ca-probate.com>
- Choice in Dying
URL: <http://www.choices.org>
- Crash Course in Wills and Trusts
URL: <http://www.mtpalermo.com>
- Discovering and Obtaining Death Benefits
URL: <http://www.bluefin.net/~jtcmac>
- Estate Planning Links Web Site, The
URL: <http://hometown.aol.com/dmk58/eplinks.html>
- FindLaw
URL: <http://www.findlaw.com/01topics/31probate>
- Growth House, Inc.
URL: <http://www.growthhouse.org>
- Internet Law Library
URL: <http://hometown.aol.com/dmk58/eplinks.html>
- Law & Estate Planning Sites on the Internet
URL: <http://www.ca-probate.com/links.htm>
- Law Journal Extra!
URL: <http://www.ljx.com/practice/trusts/index.html>

- Legal Information Institute
URL: http://www.law.cornell.edu/topics/state_statutes.html#probate
- 'Lectric Law Library™
URL: <http://www.lectlaw.com>
- National Association of Financial and Estate Planning
URL: <http://www.nafep.com>
- Ralf 's 'Lectric Law Library™ Tour
URL: <http://www.lectlaw.com/formb.htm>
- University of New England Law School
URL: <http://www.ana.edu.au/alw/pub/edinst/une/LS240TOPIC8.html>
- Webtrust.com
URL: <http://www.webtrust.com/index.htm>
- Wills on the Web
URL: <http://www.ca-probate.com/wills.htm>
- World Wide Web Virtual Library: Law: Property Law
URL: <http://www.law.indiana.edu/law/v-lib/property.html>

Related Will & Financial Planning Sites

- Institute of Certified Financial Planners
URL: <http://www.icfp.org>
- International Association for Financial Planning
URL: <http://www.iafp.org>
- National Association of Personal Financial Advisors
URL: <http://www.napfa.org>
- Pension and Welfare Benefits Administration
URL: <http://www.dol.gov/dol/pwba>

Popular Legal Search Engines

- All Law
<http://www.alllaw.com>
- American Law Sources On Line
<http://www.lawsources.com/also/searchfm.htm>

- Catalaw
<http://www.catalaw.com>
- FindLaw
URL: <http://www.findlaw.com>
- Hieros Gamos
<http://www.hg.org/hg.html>
- InternetOracle
<http://www.internetoracle.com/legal.htm>
- LawAid
<http://www.lawaid.com/search.html>
- LawCrawler
<http://www.lawcrawler.com>
- LawEngine, The
<http://www.fastsearch.com/law>
- LawRunner
<http://www.lawrunner.com>
- 'Lectric Law Library™
URL: <http://www.lectlaw.com>
- Legal Search Engines
<http://www.dreamscape.com/frankvad/search.legal.html>
- LEXIS/NEXIS Communications Center
<http://www.lexis-nexis.com/lbcc/general/search.html>
- Meta-Index for U.S. Legal Research
<http://gsulaw.gsu.edu/metaindex>
- Seamless Website, The
<http://seamless.com>
- USALaw
<http://www.usalaw.com/linksrch.cfm>
- WestLaw
<http://westdoc.com> (Registered users only. Fee paid service.)

Contacting the Bar Association in Your State

ALABAMA

Alabama State Bar
415 Dexter Avenue
Montgomery, AL 36104

Please use mailing address:

PO Box 671
Montgomery, AL 36101
(205) 269-1515

<http://www.alabar.org/>

ALASKA

Alaska Bar Association
510 L Street No. 602
Anchorage, AK 99501

Please use mailing address:

PO Box 100279
Anchorage, AK 99510

ARIZONA

State Bar of Arizona
111 West Monroe
Phoenix, AZ 85003-1742
(602) 252-4804

ARKANSAS

Arkansas Bar Association
400 West Markham
Little Rock, AR 72201
(501) 375-4605

CALIFORNIA

State Bar of California
555 Franklin Street
San Francisco, CA 94102
(415) 561-8200

<http://www.calbar.org/>

Alameda County Bar Association

<http://www.acbanet.org/>

COLORADO

Colorado Bar Association
No. 950, 1900 Grant Street
Denver, CO 80203
(303) 860-1115

<http://www.usa.net/cobar/index.htm>

CONNECTICUT

Connecticut Bar Association
101 Corporate Place
Rocky Hill, CT 06067-1894
(203) 721-0025

DELAWARE

Delaware State Bar Association
1225 King Street, 10th floor
Wilmington, DE 19801
(302) 658-5279
(302) 658-5278 (lawyer referral service)

DISTRICT OF COLUMBIA

District of Columbia Bar
1250 H Street, NW, 6th Floor
Washington, DC 20005
(202) 737-4700

Bar Association of the District of Columbia
1819 H Street, NW, 12th floor
Washington, DC 20006-3690
(202) 223-6600

FLORIDA

The Florida Bar
The Florida Bar Center
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5600

GEORGIA

State Bar of Georgia
800 The Hurt Building
50 Hurt Plaza
Atlanta, GA 30303
(404) 527-8700

<http://www.kuesterlaw.com/comp.html>

HAWAII

Hawaii State Bar Association
1136 Union Mall
Penthouse 1
Honolulu, HI 96813
(808) 537-18

<http://www.hsba.org/>

IDAHO

Idaho State Bar
PO Box 895
Boise, ID 83701
(208) 334-4500

ILLINOIS

Illinois State Bar Association
424 South Second Street
Springfield, IL 62701
(217) 525-1760

INDIANA

Indiana State Bar Association
230 East Ohio Street
Indianapolis, IN 46204
(317) 639-5465

<http://www.iquest.net/isba/>

IOWA

Iowa State Bar Association
521 East Locust
Des Moines, IA 50309
(515) 243-3179

<http://www.iowabar.org>

KANSAS

Kansas Bar Association
1200 Harrison Street
Topeka, KS 66601
(913) 234-5696

<http://www.ink.org/public/cybar/>

KENTUCKY

Kentucky Bar Association
514 West Main Street
Frankfort, KY 40601-1883
(502) 564-3795

<http://www.kybar.org/>

LOUISIANA

Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130
(504) 566-1600

MAINE

Maine State Bar Association
124 State Street
PO Box 788
Augusta, ME 04330
(207) 622-7523

<http://www.mainebar.org/>

MARYLAND

Maryland State Bar Association
520 West Fayette Street
Baltimore, MD 21201
(410) 685-7878

<http://www.msba.org/msba/>

MASSACHUSETTS

Massachusetts Bar Association
20 West Street
Boston, MA 02111
(617) 542-3602

(617) 542-9103 (lawyer referral service)

MICHIGAN

State Bar of Michigan
306 Townsend Street
Lansing, MI 48933-2083
(517) 372-9030

<http://www.umich.edu/~icle/>

MINNESOTA

Minnesota State Bar Association
514 Nicollet Mall
Minneapolis, MN 55402
(612) 333-1183

MISSISSIPPI

The Mississippi Bar
643 No. State Street
Jackson, Mississippi 39202
(601) 948-4471

MISSOURI

The Missouri Bar
 P.O. Box 119, 326 Monroe
 Jefferson City, Missouri 65102
 (314) 635-4128
<http://www.mobar.org>

MONTANA

State Bar of Montana
 46 North Main
 PO Box 577
 Helena, MT 59624
 (406) 442-7660

NEBRASKA

Nebraska State Bar Association
 635 South 14th Street, 2nd floor
 Lincoln, NE 68508
 (402) 475-7091
<http://www.nol.org/legal/nsba/index.html>

NEVADA

State Bar of Nevada
 201 Las Vegas Blvd.
 Las Vegas, NV 89101
 (702) 382-2200
<http://www.dsi.org/statebar/nevada.htm>

NEW HAMPSHIRE

New Hampshire Bar Association
 112 Pleasant Street
 Concord, NH 03301
 (603) 224-6942

NEW JERSEY

New Jersey State Bar Association
 One Constitution Square
 New Brunswick, NJ 08901-1500
 (908) 249-5000

NEW MEXICO

State Bar of New Mexico
 121 Tijeras Street N.E.
 Albuquerque, NM 87102

Please use mailing address:
 PO Box 25883
 Albuquerque, NM 87125
 (505) 843-6132

NEW YORK

New York State Bar Association
 One Elk Street
 Albany, NY 12207
<http://www.nysba.org/>

NORTH CAROLINA

North Carolina State Bar
 208 Fayetteville Street Mall
 Raleigh, NC 27601

Please use mailing address:
 PO Box 25908
 Raleigh, NC 27611
 (919) 828-4620

North Carolina Bar Association
 1312 Annapolis Drive
 Raleigh, NC 27608

Please use mailing address:
 PO Box 12806
 Raleigh, NC 27605
 (919) 828-0561
<http://www.barlinc.org/>

NORTH DAKOTA

State Bar Association of North
 Dakota
 515 1/2 East Broadway, suite 101
 Bismarck, ND 58501

Please use mailing address:
 PO Box 2136
 Bismarck, ND 58502
 (701) 255-1404

OHIO

Ohio State Bar Association
 1700 Lake Shore Drive
 Columbus, OH 43204

mailing address:
 PO Box 16562
 Columbus, OH 43216-6562
 (614) 487-2050

OKLAHOMA

Oklahoma Bar Association
1901 North Lincoln
Oklahoma City, OK 73105
(405) 524-2365

OREGON

Oregon State Bar
5200 S.W. Meadows Road
PO Box 1689
Lake Oswego, OR 97035-0889
(503) 620-0222

PENNSYLVANIA

Pennsylvania Bar Association
100 South Street
PO Box 186
Harrisburg, PA 17108
(717) 238-6715
Pennsylvania Bar Institute
<http://www.pbi.org>

PUERTO RICO

Puerto Rico Bar Association
PO Box 1900
San Juan, Puerto Rico 00903
(809) 721-3358

RHODE ISLAND

Rhode Island Bar Association
115 Cedar Street
Providence, RI 02903
(401) 421-5740

SOUTH CAROLINA

South Carolina Bar
950 Taylor Street
PO Box 608
Columbia, SC 29202
(803) 799-6653
<http://www.s sbar.org/>

SOUTH DAKOTA

State Bar of South Dakota
222 East Capitol
Pierre, SD 57501
(605) 224-7554

TENNESSEE

Tennessee Bar Assn
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421
<http://www.tba.org/>

TEXAS

State Bar of Texas
1414 Colorado
PO Box 12487
Austin, TX 78711
(512) 463-1463

UTAH

Utah State Bar
645 South 200 East, Suite 310
Salt Lake City, UT 84111
(801) 531-9077

VERMONT

Vermont Bar Association
PO Box 100
Montpelier, VT 05601
(802) 223-2020

VIRGINIA

Virginia State Bar
707 East Main Street, suite 1500
Richmond, VA 23219-0501
(804) 775-0500

Virginia Bar Association
701 East Franklin St., Suite 1120
Richmond, VA 23219
(804) 644-0041

VIRGIN ISLANDS

Virgin Islands Bar Association
P.O. Box 4108
Christiansted, Virgin Islands 00822
(809) 778-7497

WASHINGTON

Washington State Bar
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500 Westin Street
2001 Sixth Avenue
Seattle, WA 98121-2599
(206) 727-8200

WEST VIRGINIA

West Virginia State Bar
2006 Kanawha Blvd. East
Charleston, WV 25311
(304) 558-2456

<http://www.wvbar.org>

West Virginia Bar Association
904 Security Building
100 Capitol Street
Charleston, WV 25301
(304) 342-1474

WISCONSIN

State Bar of Wisconsin
402 West Wilson Street
Madison, WI 53703
(608) 257-3838

<http://www.wisbar.org/home.htm>

WYOMING

Wyoming State Bar
500 Randall Avenue
Cheyenne, WY 82001

PO Box 109
Cheyenne, WY 82003
(307) 632-9061