



Living Trusts

A living trust is a legal entity established during a person's lifetime to manage their assets. Its primary purpose is to facilitate the distribution of assets to beneficiaries after the individual's death, often bypassing the probate process. Here are the key features and benefits of a living trust:

Key Features and Benefits of a Living Trust

- Avoidance of Probate:** One of the main advantages is bypassing the probate process, which can be time-consuming, emotional and expensive. Assets placed in a living trust can be distributed directly to beneficiaries without court involvement, leading to faster and more private asset transfer.
- Privacy:** Probate proceedings are public record, whereas a living trust allows for private distribution of assets. It keeps details of your estate and asset distribution confidential.
- Incapacity Planning:** A living trust can also provide for the management of assets in case the creator becomes incapacitated. In such situations, a successor trustee, appointed by the creator, can step in to manage the trust assets as per the creator's instructions.
- Control and Flexibility:** The creator of the trust retains control over the assets during their lifetime and can modify or revoke the trust as long as they are mentally competent. They can also outline specific instructions for how assets are to be managed and distributed after their death.
- Simplified Distribution:** Upon the creator's passing, the assets in the trust can be distributed to beneficiaries more quickly and with fewer complications compared to the probate process.
- Continuity:** A living trust can provide for the continued management and distribution of assets according to the creator's wishes even after their death, allowing for a smooth transition of assets.

A living trust can only manage those assets "owned" by or titled to the trust. Careful planning is needed to ensure all appropriate assets are transferred to the trust to maintain the benefits of the trust. Additionally, newly acquired assets should be purchased and maintained in the trust's name.

An Irrevocable Trust for Nursing Home Cost Mitigation

An irrevocable trust is a powerful tool for safeguarding real estate and other large assets while planning for potential nursing home expenses. This trust, established by the settlor, provides peace of mind by ensuring the secure management of valuable real estate assets and protection from nursing home costs, provided that the transfer of the real estate to the trust occurred at least five years prior to application for Medicaid.

Key Features of the Irrevocable Trust:

- Real Estate Protection:** The primary objective of this irrevocable trust is to shield your real estate assets from nursing home costs. After a waiting period of five years from the date the real estate is transferred into the trust, the property is no longer considered a countable asset for Medicaid eligibility purposes, thus safeguarding it from being used to cover nursing home expenses.
- Beneficiaries:** The trust allows for the designation of beneficiaries who may ultimately benefit from the assets held within it. The assets in the trust cannot be transferred (or given) to the settlor, but the trustee can use trust funds for the benefit of these beneficiaries, subject to the trust's terms and the trustee's discretion.
- Asset Preservation:** By transferring your real estate and other large assets into this irrevocable trust, you are taking proactive steps to protect your assets and ensure they are preserved for the benefit of your chosen beneficiaries. This strategy offers a practical approach to long-term care planning without the need for asset depletion.
- Five-Year Waiting Period:** The critical element for Medicaid eligibility protection is the five-year waiting period. This ensures that the trust effectively mitigates nursing home costs while complying with Medicaid regulations. If nursing home care is required within five years, it is important to take strategic steps to pay for such care from private sources to preserve the assets in this trust.