

What is a living trust?

A living trust is just what it says. While you are living, you transfer ownership of your financial assets out of your name and into the name of a trust. You entrust the handling of those assets to the person you name as trustee.

Though you don't technically own the assets after you put them in a trust, you can still control them. You can also get the benefit of them. You do this by naming yourself as the trustee of the trust and as the beneficiary.

If you transfer assets to a trust during your lifetime, the assets belong to the trust. This means that the property you own must be put in the name of the trust. Deeds must be redrafted in the trust names and all assets must be changed to the name of the trust. This is called funding the trust.

When you die, the assets don't go through probate because you don't own them. The trust papers, rather than a will, give your instructions for what should happen to these assets after your death. You trust the person you have named as successor (back-up) trustee to carry out your instructions.

Not for everyone

A living trust can be a legitimate approach to planning for your assets now and after your death. Living trusts are not for everyone, however.

The most clear-cut benefit of a living trust is for:

- Persons who own property in more than one state
- Persons with significant stock holdings
- Persons whose wills are likely to be contested
- Persons who may need help managing their assets now or in the future
- Parents managing assets for an adult child with a disability

Probate does not affect everyone

One reason people set up living trusts is to save money by avoiding probate.

You do not need a living trust to avoid probate if your estate will not go through probate anyway. This is true for many Tennesseans:

- They have a home owned jointly with their spouse, an insurance policy with a named beneficiary, and a bank account jointly owned with right of survivorship or set up as a "pay on death" account. None of these assets goes through probate.
- Other Tennesseans have small amounts of property that do not require the full probate process because they fall under the small estates law.

People who do have property that would go through probate need facts, not myths, about probate in Tennessee. Probate costs are generally lower in Tennessee than in many other states. Also, within the state, probate costs and procedures vary widely.