

# How Living Trusts Avoid Probate

It's about as easy to prepare a living trust as it is to write a will. But property left through a will generally goes through probate, causing survivors delay and expense. (Probate involves appraising the property, paying debts, and distributing what's left.) When you make a living trust -- a device in which you hold property as a "trustee" -- your surviving family members can transfer your property quickly and easily, without probate.

Most people want to leave as much of their money to their children, or other heirs, as possible -- and want to avoid a big chunk of that money going to probate lawyers. That's where living trusts come in -- they can eliminate the need for probate and probate fees.

Probate involves inventorying and appraising the property, paying debts and taxes, and distributing the remainder of the property according to the will. When you make a living trust, your surviving family members can transfer your property quickly and easily, without probate. More of the property you leave goes to the people you want to inherit it.

## Types of Living Trusts

The two most common types of living trusts are:

- a basic living trust (for an individual or couple), which avoids probate, and
- an AB trust (for a couple), which both avoids probate and saves on estate tax.

This article discusses basic trusts. For information on AB trusts, see [Tax-Saving AB Trusts](#).

Unless you expect to owe federal estate tax at your death or your spouse's, a basic living trust to avoid probate is probably all the trust you need. (Fewer than 2% of estates -- those worth more than \$2 million -- owe estate tax.)

## Probate-Avoidance Living Trusts

A basic living trust allows property to avoid probate and to quickly and efficiently pass to the beneficiaries you name, without the hassles and expense of probate court proceedings. A married couple can use one basic living trust to handle both co-owned property and separate property.

## Creating a Trust

To create a basic living trust, you make a document called a declaration of trust, which is similar to a will. You name yourself as trustee -- the person in charge of the trust property. If you and your spouse create a trust together, you will be co-trustees.

Then you transfer ownership of some or all of your property to yourself in your capacity as trustee. For example, you might sign a deed transferring your house from yourself to yourself "as trustee of the Jane Smith Revocable Living Trust dated July 12, 2006." Because you're the trustee, you don't give up any control over the property you put in trust.

In the declaration of trust document, you name the people or organizations you want to inherit trust property after your death. You can change those choices if you wish; you can also revoke the trust at any time.

When you make a living trust, you should also make a back-up will. Doing so will ensure that any property not transferred to the trust will go to the people or organizations you want to receive it. If you don't make a will, any property not included in your trust will be distributed according to the laws of your state -- usually to the nearest relatives.

## **After You Die**

When you die, the person you named in the trust document to take over -- called the successor trustee -- transfers ownership of trust property to the people you want to get it. In most cases, the successor trustee can handle the whole thing in a few weeks with some simple paperwork. No probate court proceedings are required.

***Note:** Although a living trust transfers property like a will, you should still also have a will because the trust will be unable to accomplish certain things that only a will can, such as naming an executor or a guardian for minor children.*

***Note:** There are other ways to avoid the probate process besides creating a living trust, such as titling property jointly.*

***Note:** Living trusts do not generally minimize estate taxes or protect property from future creditors or ex-spouses.*