



The Role of the Elder Law Attorney

An important benefit of the living trust is that it provides an alternative to conservatorship for persons who may have a disability that precludes them from managing their own financial affairs. By careful drafting, a living trust can assure that assets are managed for you by a trustee you have selected and that your preferences as to how they are managed are carefully set out in the trust agreement.

Elder Law Attorneys are particularly sensitive to the concerns of older persons and their families and are able to address these special issues. Elder Law Attorneys also are available to provide information about other forms of estate planning as well as legal tools available to protect personal autonomy.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder and Special Needs Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

NAELA members help clients realize their goals through quality legal work on issues affecting older adults, people with disabilities, and their loved ones. NAELA educates and advocates regarding these kinds of issues on a state and national basis.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder or Special Needs Law attorney.

If you are seeking general information, you can also visit NAELA's website at www.NAELA.org.

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Living Trusts



National Academy of
Elder Law Attorneys, Inc.

*Leading the Way in
Special Needs and Elder LawSM*

The Law and Aging Series

The Issues

A **Living Trust** is an agreement between you (the **Settlor** or **Trustor**) and an individual or entity (the **Trustee**) made during your lifetime. The trust agreement determines how assets placed in the Trust will be managed and distributed. Trusts can be **Revocable** or **Irrevocable**.

A Living Trust can provide various benefits to meet asset protection and management purposes:

- The trust provides for management of your assets during your lifetime and usually names someone to assume responsibility for them if you become incapacitated. This can often eliminate the need to go to court to arrange for appointment of a guardian or conservator.
- You determine how your assets will be managed by giving written instructions in the trust.
- Under certain circumstances and with special planning, trusts can be used to help plan for reducing the costs of long-term health care associated with catastrophic illness
- In states where probate is lengthy and expensive, you may avoid delay and expense because the trust contains instructions for distribution of your assets after death without court proceedings (if all of your non-retirement account assets are owned in your trust).
- If you transfer ownership of out-of-state real estate to your trust during your lifetime, this usually will avoid the need for a probate proceeding in the other state(s).

What You Need to Know

Trusts are not only for the wealthy, and not everyone needs a trust. There are different types of trusts for different purposes.

A trust can be established and all of your non-retirement assets transferred into its ownership

immediately, or it can be established as a **Standby Trust**, ready to receive assets if the Settlor becomes disabled. In such cases, someone needs authority to transfer the assets into the trust. This usually will be the agent under a special durable power of attorney granting the specific power to transfer assets to a trust.

Irrevocable Trusts cannot be changed or canceled after they are created and have special tax treatment. Careful drafting may permit an Irrevocable Trust to be amendable for some purposes after it is established.

Revocable Trusts are subject to amendment or termination according to the terms of the trust agreement. Revocable trusts do not save any taxes; all income from property in the trust is taxed to the person establishing the trust.

Irrevocable Life Insurance Trusts can be created to provide substantial estate tax savings for some persons with large life insurance policies. Such trusts require careful planning.

Supplemental Needs Trusts or **Special Needs Trusts** are used to manage assets for a person who may receive public benefits. Such a trust can provide funds for items not covered by such benefits without affecting the recipient's eligibility for the various programs available.

Trusts are governed by state law and should be written so that they meet your specific needs and preferences.

Where to Go for Help

Living trusts are not for everyone, but many people can benefit from the security they provide for management, and many people can save money by eliminating the need for probate.

Deciding whether to create a living trust requires analysis of the extent of your assets, the types of assets you own, and your personal preferences concerning their management. Many people prefer to keep personal, unfettered control over their assets for life while others



may be willing to have other people manage their resources for them.

Attorneys, accountants, financial planners and other advisors often will be able to assist in conducting the review of what is best for you. A trust is only one element of complete estate planning. Trusts, like wills or other legal documents, are best prepared by attorneys. Any document, including a trust, should be reviewed regularly in response to changes in the law or in your family or financial circumstances.

Naming a trustee requires careful thought. Most people will be trustees of their own living trusts, but a successor must be named for continuation after the death or disability of the Settlor. Appropriately qualified family members, friends or financial institutions often are available to serve. Your attorney is able to counsel you regarding this decision.