

# **Understanding Living Trusts**

---

**13<sup>th</sup> Edition**

Denis Clifford

# Table of Contents

---

Your Legal Companion for Making Your Own Living Trust.....	i
<b>Chapter 1 – Overview of Living Trusts .....</b>	<b>1</b>
Learning Objectives .....	1
Introduction.....	1
Living Trusts Explained .....	1
The Concept of a Trust .....	1
Creating a Living Trust.....	2
How a Living Trust Works .....	2
Probate and Why You Want to Avoid It .....	3
Avoiding Probate .....	5
Informal Probate Avoidance.....	5
Other Probate-Avoidance Methods .....	6
Living Trusts and Estate Taxes .....	6
Other Advantages of a Living Trust .....	6
Out-of-State Real Estate Doesn't Have to Be Probated in That State .....	6
You Can Avoid the Need for a Conservatorship .....	7
Your Estate Plan Remains Confidential.....	7
You Can Change Your Mind at Any Time .....	7
No Trust Record Keeping Is Required While You Are Alive .....	8
You Can Name Someone to Manage Trust Property for Young Beneficiaries .....	8
No Lawyer Is Necessary to Distribute Your Property .....	8
Possible Drawbacks of a Living Trust.....	8
Initial Paperwork.....	8
Transfer Taxes .....	9
Difficulty Refinancing Trust Real Estate.....	9
No Cutoff of Creditors' Claims.....	9
Review Questions.....	11
Review Answers .....	12
<b>Chapter 2 – Human Realities and Living Trusts.....</b>	<b>13</b>
Learning Objectives .....	13
Introduction.....	13
Leaving Unequal Amounts of Property to Children .....	13
Second or Subsequent Marriages .....	14
Single People .....	15
Disinheriting a Child.....	15
Unmarried Couples.....	15
Same-Sex Couples.....	16
Communicating Your Decisions to Family and Friends .....	16
Review Questions.....	17
Review Answers .....	18
<b>Chapter 3 – Common Questions About Living Trusts .....</b>	<b>19</b>
Learning Objectives .....	19
Introduction.....	19
Does Everyone Need a Living Trust? .....	19
If I Prepare a Living Trust, Do I Need a Will? .....	21
How Can I Leave Trust Property to Children and Young Adults? .....	21
Providing for Minor Children.....	21
Young Adult Beneficiaries Who Can't Handle Money Responsibly Now.....	22
Will My Living Trust Reduce Estate Taxes?.....	22
Will I Have to Pay Gift Taxes? .....	22
Will a Living Trust Shield My Property From Creditors? .....	23

## Table of Contents

While You're Alive.....	23
After Your Death.....	23
Do I Need a "Catastrophic Illness Clause" in My Trust?.....	23
How Does Where I Live Affect My Living Trust?.....	24
Determining Your Legal Residence.....	24
If You Live Outside the Country.....	24
If You Move to Another State or Country .....	25
Out-of-State Beneficiaries or Successor Trustee .....	25
Registration .....	25
Can I Place Real Estate in a Living Trust?.....	25
Property Tax Reassessment.....	25
Transfer Taxes .....	26
Deducting Mortgage Interest.....	26
Insurance Policies.....	26
Tax Breaks for Sellers.....	26
Homestead Rights .....	26
Selling or Refinancing Your House.....	26
Due-on-Sale Clauses.....	27
Transferring Part Interests in Real Estate.....	27
Owning Real Estate in More Than One State.....	27
Rental (Income) Property.....	27
Contaminated Property .....	27
Can I Sell or Give Away Trust Property While I'm Alive?.....	28
Making Gifts .....	28
Selling Trust Property .....	28
Is a Bank Account Held in Trust Insured by the FDIC? .....	28
Will Property in My Living Trust Get a "Stepped-Up" Tax Basis When I Die? .....	28
Who Must Know About My Living Trust? .....	29
What About Free Living Trust Seminars? .....	29
Could Someone Challenge My Living Trust? .....	29
Challenges to the Validity of the Trust .....	30
Lawsuits by Spouses .....	30
Lawsuits by a Child.....	30
Review Questions.....	31
Review Answers .....	33
<b>Chapter 4 – What Type of Trust Do You Need?.....</b>	<b>37</b>
Learning Objectives .....	37
Introduction.....	37
If You Are Single.....	37
If You Are Part of a Couple .....	38
Individual Trusts for Members of a Couple .....	38
Basic Shared Living Trusts .....	39
How a Basic Shared Trust Works.....	40
What Happens When One Spouse Dies.....	40
AB Disclaimer Trusts .....	43
Review Questions.....	44
Review Answers .....	45
<b>Chapter 5 – The Tax-Saving AB Trust .....</b>	<b>47</b>
Learning Objectives .....	47
Introduction.....	47
The Purpose of an AB Trust.....	47
AB Trusts Before Portability .....	47
AB Trusts After Portability .....	47
AB Disclaimer Trusts .....	48
How an AB Disclaimer Trust Works.....	48

## Table of Contents

Creation of the Trust .....	48
When One Spouse Dies.....	49
When the Surviving Spouse Dies .....	51
Is Nolo's AB Disclaimer Trust Right for You?.....	52
Examining Your Personal Situation .....	52
Drawbacks of an AB Disclaimer Trust .....	54
Alternatives to an AB Disclaimer Trust .....	55
Creating a Nolo AB Disclaimer Trust.....	56
Review Questions.....	57
Review Answers .....	58
<b>Chapter 6 – Choosing What Property to Put in Your Living Trust .....</b>	<b>59</b>
Learning Objectives .....	59
Introduction.....	59
Listing the Property to Be Put in Your Trust .....	59
Property You Should Not Put in Your Living Trust .....	60
Property You Can Put in Your Living Trust .....	63
Real Estate.....	63
Small Business Interests.....	65
Money Market and Bank Accounts.....	66
Stocks and Securities .....	66
Cash Accounts .....	66
U.S. Treasury Notes or Bonds .....	67
Royalties, Copyrights, and Patents.....	67
Other Valuable Property.....	67
Marital Property Laws .....	67
Community Property States .....	68
Common Law Property States .....	71
Completing the Property Worksheet.....	71
Section I: Assets.....	72
Section II: Liabilities .....	73
Section III: Net Worth.....	73
Review Questions.....	81
Review Answers .....	83
<b>Chapter 7 – Trustees .....</b>	<b>87</b>
Learning Objectives .....	87
Introduction.....	87
The Initial Trustee .....	87
Your Responsibilities as Trustee .....	87
Naming a Cotrustee .....	88
The Trustee After One Spouse's Death or Incapacity .....	88
The Successor Trustee .....	88
The Job of the Successor Trustee.....	89
The Successor Trustee's Authority.....	91
Choosing Your Successor Trustee .....	93
Review Questions.....	96
Review Answers .....	97
<b>Chapter 8 – Choosing Your Beneficiaries .....</b>	<b>99</b>
Learning Objectives .....	99
Introduction.....	99
Kinds of Trust Beneficiaries.....	99
Individual or Basic Shared Trusts .....	99
AB Disclaimer Trusts .....	100
Naming Your Primary Beneficiaries.....	100
Individual Trust .....	101

## Table of Contents

Basic Shared Living Trust .....	101
AB Disclaimer Trust .....	101
Simultaneous Death Clauses .....	102
Shared Gifts .....	102
Percentage of Ownership .....	103
Conflict .....	104
What Happens If a Beneficiary Dies Before You Do .....	104
Some Common Concerns About Beneficiaries .....	104
One Primary Beneficiary .....	104
Married Beneficiaries .....	104
Children From Prior Marriages .....	105
Minors or Young Adults .....	105
Your Successor Trustee as a Beneficiary .....	105
Pets .....	106
Naming Alternate Beneficiaries .....	106
Basic Shared Trust .....	107
AB Disclaimer Trusts .....	107
Naming More Than One Alternate Beneficiary .....	108
Naming Alternate Beneficiaries for Cobeneficiaries .....	108
Imposing a Survivorship Period .....	108
Residuary Beneficiaries .....	109
Individual or Basic Shared Living Trusts .....	109
AB Disclaimer Trusts .....	110
Disinheritance .....	110
Disinheriting a Spouse .....	110
Disinheriting a Child .....	111
Children Born After a Will or Trust Is Prepared .....	112
Grandchildren .....	112
General Disinheritance Clauses .....	112
No-Contest Clauses .....	113
Putting Conditions on Beneficiaries .....	113
Property That Is No Longer in Your Trust at Your Death .....	113
Beneficiary Worksheets .....	114
Review Questions .....	119
Review Answers .....	121
<b>Chapter 9 – Property Left to Minor Children or Young Adults .....</b>	<b>123</b>
Learning Objectives .....	123
Introduction .....	123
Property Management Options .....	124
Which Method Is Better for You: Child's Trust or Custodianship? .....	124
Tax-Saving Educational Investment Plans .....	126
529 Plans .....	126
ABLE Accounts .....	127
Coverdell Accounts .....	127
Child's Trusts .....	127
How a Child's Trust Is Created .....	127
Who Serves as the Trustee .....	129
The Trustee's Duties .....	129
Leaving Life Insurance Proceeds Through a Child's Trust .....	129
Custodianships .....	130
How a Custodianship Is Created .....	130
Changes in State Law .....	131
If You Move .....	131
The Custodian's Responsibilities .....	132
Choosing a Custodian .....	132
Review Questions .....	133
Review Answers .....	134

## Table of Contents

<b>Chapter 10 – Preparing Your Living Trust Document.....</b>	<b>135</b>
Learning Objectives .....	135
Introduction.....	135
Choosing the Right Trust Form .....	136
Making Changes to a Trust Form .....	136
Step-by-Step Instructions.....	136
Step [1]: Name Your Living Trust .....	137
Step [2]: Decide How Many Property Schedules Your Trust Needs .....	138
Step [3]: List Your Trust Property on the Trust Schedule(s) .....	139
Sample Schedule A for Shared Property .....	144
Step [4]: Identify the Nature of Shared Trust Property (Forms 2 and 3 Only).....	145
Step [5A]: Decide Whether You Want Management of Trust Property If You Become Incapacitated (All Forms) .....	145
Step [5B]: Decide Whether Your Spouse or Successor Trustee May Amend Your AB Trust If You Are Incapacitated and the Estate Tax Law Changes (Form 3 Only).....	146
Step [6]: Name Your Successor Trustee .....	147
Step [7]: Name the Primary and Alternate Trust Beneficiaries.....	148
Step [8A]: Name Your Residuary Beneficiary (Forms 1 and 2 Only).....	158
Step [8B]: Name Your Final Beneficiaries (Form 3 Only) .....	159
Step [9]: Provide for Payment of Debts and Taxes .....	160
Step [10]: Provide Property Management for Young Beneficiaries (Optional).....	162
Step [11]: Decide About Reports to Final Beneficiaries (Form 3 Only) .....	163
Prepare Your Final Trust Document.....	163
Consider Having Your Work Checked by a Lawyer .....	165
Sign Your Living Trust in Front of a Notary.....	165
Review Questions.....	167
Review Answers .....	169
<b>Chapter 11 – Transferring Property to Your Trust .....</b>	<b>171</b>
Learning Objectives .....	171
Introduction.....	171
Paperwork .....	171
Property Without a Document of Title.....	171
Property With a Document of Title.....	172
Technical Ownership .....	173
Property You Acquire Later .....	173
Problems With Financial Institutions .....	173
Certifications of Trust .....	174
Real Estate.....	176
Preparing the Deed.....	177
Recording the Deed .....	178
Transfer Taxes .....	178
Due-on-Sale Mortgage Clauses .....	179
Insurance.....	179
Transferring Deeds of Trust .....	179
Real Estate Outside the United States .....	180
Bank Accounts and Safe Deposit Boxes .....	180
Securities.....	180
Brokerage Accounts.....	180
Stock Certificates.....	181
Government Bonds.....	181
Mutual Fund Accounts .....	181
Stock Options .....	181
Retirement Accounts.....	181
Vehicles, Boats, and Planes.....	181
Business Interests .....	182
Sole Proprietorships.....	182

## Table of Contents

Solely Owned Corporations.....	182
Closely Held Corporations and Limited Liability Companies.....	182
Partnership Interests.....	182
Limited Partnerships .....	183
Copyrights .....	183
Patents .....	183
Royalties.....	183
Review Questions.....	184
Review Answers .....	186
<b>Chapter 12 – Copying, Storing, and Registering Your Trust Document.....</b>	<b>189</b>
Learning Objectives .....	189
Introduction.....	189
Making Copies.....	189
Storing the Trust Document .....	190
Registering the Trust.....	190
Review Questions.....	191
Review Answers .....	192
<b>Chapter 13 – Living With Your Living Trust .....</b>	<b>193</b>
Learning Objectives .....	193
Introduction.....	193
Adding Property to Your Living Trust.....	193
Selling or Giving Away Trust Property .....	194
When to Amend Your Living Trust Document.....	195
You Marry or Have a Child.....	195
You Move to Another State .....	195
You Change Your Name.....	196
Your Spouse Dies.....	196
A Major Beneficiary Dies.....	196
You Want to Change Ownership of Trust Property .....	197
Who Can Amend a Living Trust Document.....	197
Individual Living Trusts .....	197
Basic Shared Living Trusts and AB Disclaimer Trusts .....	197
Someone Acting on Your Behalf .....	197
Making Changes to Your Trust.....	198
Simple Trust Amendments.....	198
Subsequent Amendments.....	200
Trust Restatements.....	201
Revoking Your Living Trust.....	201
Who Can Revoke a Living Trust.....	201
When to Revoke Your Living Trust .....	202
How to Revoke Your Living Trust .....	202
Review Questions.....	203
Review Answers .....	204
<b>Chapter 14 – After a Grantor Dies.....</b>	<b>205</b>
Learning Objectives .....	205
Introduction.....	205
Who Serves as Trustee After the Grantor's Death.....	205
More Than One Successor Trustee.....	205
If a Trustee Resigns.....	206
Appointing a New Trustee .....	206
Removing a Trustee.....	206
The Trustee's Duties.....	207
All Trustees .....	207
State-Specific Duties.....	209

## Table of Contents

Trust-Specific Duties.....	209
Transferring Property to Beneficiaries .....	213
Property Without Title Documents.....	214
Bank Accounts.....	214
Real Estate .....	214
Stocks and Bonds.....	215
Mutual Funds or Money Market Accounts.....	216
Small Business Interests.....	216
Copyrights .....	217
Patents .....	217
Other Property With Title Documents .....	217
Preparing and Filing Tax Returns.....	217
Administering a Child's Trust.....	217
Administering a Custodianship.....	218
Review Questions.....	219
Review Answers .....	220
<b>Chapter 15 – A Living Trust as Part of Your Estate Plan.....</b>	<b>221</b>
Learning Objectives .....	221
Introduction.....	221
Using a Backup Will .....	221
Other Probate-Avoidance Methods .....	221
Pay-on-Death Financial Accounts .....	222
Transfer-on-Death Registration for Stocks and Bonds .....	222
Individual Retirement Accounts .....	222
Life Insurance .....	223
Joint Tenancy .....	224
Tenancy by the Entirety .....	227
Options in Community Property States.....	228
Transfer-on-Death Deeds .....	228
Transfer-on-Death Registration for Vehicles.....	228
Gifts.....	228
Probate Shortcuts for Small Estates.....	229
Federal Gift and Estate Taxes.....	229
Federal Estate Taxes.....	230
Federal Gift Taxes .....	230
Special Rules for Noncitizen Spouses.....	231
Reducing Estate Tax.....	231
State Inheritance and Estate Taxes.....	234
State Inheritance Taxes .....	234
State Estate Taxes .....	235
Your Residence for State Tax Purposes.....	235
Planning for Incapacity.....	236
Durable Power of Attorney for Finances .....	236
Medical Care Documents.....	236
Long-Term Trusts to Control Property .....	237
AB Trusts Used to Control Property .....	237
Spendthrift Trusts .....	238
Special Needs Trusts.....	238
Flexible Trusts .....	239
Review Questions.....	240
Review Answers .....	242
<b>Chapter 16 – Wills.....</b>	<b>245</b>
Learning Objectives .....	245
Introduction.....	245
Why Prepare a Backup Will?.....	245

## Table of Contents

What You Can Do in a Backup Will .....	246
Pour-Over Wills .....	246
When Not to Use a Pour-Over Will .....	247
When You May Want a Pour-Over Will.....	247
How to Create a Pour-Over Will .....	247
Avoiding Conflicts Between Your Will and Your Living Trust.....	248
Filling in the Will Form.....	248
Signing and Witnessing Your Will.....	249
Review Questions.....	255
Review Answers .....	256
<b>Chapter 17 – If You Need Expert Help .....</b>	<b>257</b>
Learning Objectives .....	257
Introduction.....	257
Hiring a Lawyer to Review Your Living Trust .....	257
Working With an Expert .....	257
What Type of Lawyer Do You Need? .....	257
How to Choose a Lawyer .....	258
Lawyer Fees .....	259
Doing Your Own Legal Research .....	259
Legal Research in Law Libraries .....	260
Legal Information Online.....	260
Review Questions.....	261
Review Answers .....	262
<b>Glossary.....</b>	<b>263</b>
<b>Appendix A – Using the eForms .....</b>	<b>271</b>
Editing RTFs.....	271
List of eForms .....	271
<b>Appendix B – Forms.....</b>	<b>273</b>
<b>Index .....</b>	<b>361</b>