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The Pros and Cons of Living Trusts

You can use them to avoid probate, but not everyone needs one

by Jane Bryant Quinn, [AARP \(https://www.aarp.org\)](https://www.aarp.org), September 10, 2019 |  Comments: 5



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[En español \(/espanol/dinero/presupuesto-y-ahorro/info-2019/ventajas-y-desventajas-de-fideicomisos-testamentarios-jbq.html?intcmp=AE-MON-TOSPA-TOGL-ES\)](https://espanol/dinero/presupuesto-y-ahorro/info-2019/ventajas-y-desventajas-de-fideicomisos-testamentarios-jbq.html?intcmp=AE-MON-TOSPA-TOGL-ES). | You have a will (I hope!), but is that enough? Would you and your heirs be better off if you created a living trust? These trusts often appear on the menu at free senior seminars, tempting everyone to gobble them up. They can indeed be valuable — for specific financial and personal purposes. But sticking with a will may be better, and cheaper, depending on your state laws and the amount of your assets.

Like wills, living trusts (formally known as revocable trusts) list the people who will receive your property after you die, leaving you free to manage it while you're alive. Unlike wills, trusts require that you give up direct ownership of that property. Instead, it's normally transferred, or “retitled,” into the trust. I'll say more about this process in a minute. First, I'd like to make some general comparisons between wills and trusts.

Living trusts avoid probate, which is often part of their appeal. Probate is the legal process by which a will is accepted as genuine, creditors get paid and heirs receive assets to which they are entitled. With trusts, these functions are handled privately by a trustee. The question for you is whether probate is worth avoiding. Many states have streamlined, simplified procedures for uncontested wills. They also have low-cost ways to probate modest estates. (The site [nolo.com \(https://www.nolo.com/\)](https://www.nolo.com/) has collected a list of states' rules; if you live in, say, Ohio, type “avoiding probate in Ohio” in the site's search box, then scroll down the results to Articles.) There's no probate at all for retirement accounts with named beneficiaries, joint accounts with survivorship rights, pay-on-death accounts and life insurance. If these types of assets make up the bulk of your estate, a will works fine.

[For ways to save and more, get AARP's monthly Money newsletter \(https://secure.aarp.org/applications/user/login?referrer=https%3A%2F%2Fsecure.aarp.org%2Fapplications%2Fuser%2FsubscribeF](https://secure.aarp.org/applications/user/login?referrer=https%3A%2F%2Fsecure.aarp.org%2Fapplications%2Fuser%2FsubscribeF)

Trusts are useful, however, in certain situations — for example, if probate is expensive (as it is in states where lawyers charge a percentage of the estate's assets, rather than flat or hourly fees); if you own property in more than one state (to avoid double probate); or if you have [assets that need ongoing management \(/money/budgeting-saving/info-2018/financial-plan-protect-spouse.html\)](https://money/budgeting-saving/info-2018/financial-plan-protect-spouse.html), such as business interests or trading accounts. In many states, living trusts can't be reached by creditors, says attorney Gerry W. Beyer, a professor of law at Texas Tech University.

With or without a trust, you can name backups to manage your affairs should you become disabled. If you don't have a trust, you can give a power of attorney to a person you pick. With a trust, your chosen trustee will act. The transition might go a little more smoothly with a trust, but not necessarily.

Trusts require extra paperwork. You have to transfer all your property into your name as trustee. That includes the deed to your house, your bank and investment accounts (usually excluding tax-deferred retirement accounts), valuable personal property and any new assets you acquire. You'll want legal guidance, which raises the cost of a living trust compared with a basic will. If the transfers go wrong, your trust becomes a useless piece of paper. “I've seen this happen thousands of times,” Beyer says.

Never buy a living trust form off the rack. Ask an experienced lawyer what it can do and whether you need it at all.

Personal finance expert Jane Bryant Quinn is the author of How to Make Your Money Last.