

# DEANDRADE CALLAHAN, LLC

ATTORNEYS AT LAW

BUSINESS ◇ ESTATE PLANNING ◇ PROBATE ◇ ASSET PROTECTION

## Do I need a Living Trust?

First, a Living Trust is a trust you set up to hold your property and to govern the use and distribution of your property during your lifetime, during any period when you are incapacitated, and even after your death (when it acts much like a Last Will and Testament). You can amend or revoke a Living Trust at any time during your life making it a very flexible planning tool. Due to their broad scope and flexibility, Living Trusts are often viewed as one of the most comprehensive estate planning documents.

But do you really need a Living Trust? If you answer YES to any of these questions, you may want to consider one.

1. **Do you own property in multiple states?** After you die, your family or other legal representatives must go through the probate process in each state where you own property in your name. The time, hassle and expense of probate in multiple other states can be eliminated by owning all your out-of-state property in a Living Trust.
2. **Do you want to avoid the probate process entirely?** In addition to owning out-of-state property in a Living Trust, you may avoid the probate process entirely by transferring [almost] all your assets to your Living Trust. Note that some assets cannot be transferred to your Living Trust (e.g. retirement accounts), and other assets with beneficiary designations (e.g. life insurance, certain bank accounts, etc.) can automatically avoid probate by naming individuals or your Living Trust as a beneficiary.
3. **Are you concerned about the privacy of your estate planning wishes?** Unlike a Will which becomes public record during the probate process, your Living Trust remains a private document that is typically only shared with the trustee, certain beneficiaries, and other key individuals and advisors. If you plan to include any provisions such as disinheriting a family member, limiting or conditioning a family member's inheritance, incorporating special trust provisions for a beneficiary with substance abuse problems, or providing an inheritance for a controversial beneficiary, then maintaining the privacy of your wishes through a Living Trust may be a special priority.
4. **Is there any chance one of your heirs may object to your estate planning wishes?** If so, then distributing your assets under the terms of a Living Trust may provide you with added protections over a Will and the typical laws that apply during the probate process.
5. **Is your primary estate planning goal to simplify and speed the distribution of your assets after you die?** Some people's main estate planning goal is to have a clear plan that can go into action immediately after they die. While the probate process in many states has been made simpler and less costly, it can still take up to a year or more to complete even a relatively straight-forward probate process in many states. A properly formed and funded Living Trust can eliminate this waiting game by allowing control of the Living Trust to pass to a successor trustee who can almost immediately begin carrying out wishes according to the terms of the Living Trust.
6. **Are you concerned about becoming incapacitated due to an accident, advancing age, a known illness, or a degenerative condition?** Similar to the benefits discussed in #5, a Living Trust can be very helpful for transitioning responsibility for your assets and financial decisions if you become incapacitated. A Living Trust allows you to define "incapacity" so if you are incapacitated, whether the result of an accident or a foreseeable health circumstance, you'll have a clear framework for transferring control of your Living Trust to a successor trustee you have named in advance.

A Living Trust is not for everyone, but under the right circumstances, it might make a lot of sense for you and your family.

By M. Patrick Callahan, Esq.  
© M. Patrick Callahan, LLC