

Living Trust Additional Information

You have finished creating your living trust. What is next?

- Gather your witness(es) and trustee(s) to sign the document.
- Transfer your property into the trust. If you will be transferring real estate you must use a deed.
- Consider creating a simple backup Last Will and Testament to provide a safeguard for any property you might not transfer into the trust before you pass away.
- Inform the trustees about their duties under your state's law.
- Learn about your state's estate tax exemptions.
- A living trust is only one part of a complete estate plan. Learn how LawDepot can help you protect your family's future with our collection of [estate planning documents](#).



Signing the Document

Once you have gathered your witness(es) and trustee(s), you will need to have all parties sign the document in the presence of one another, as well as in the presence of a Notary Public. It is best to have the signing of your living trust notarized in addition to being witnessed as this will make it easier to transfer property. Many banks and private institutions will be hesitant to take an unnotarized living trust at face value.



Transfer Property

A trustee can only control property owned by the trust. To be owned by the trust, the property must be transferred into the trust in the name of the trustee.

For example, if John Doe is the grantor and trustee of his own living trust, the property would need to be transferred into the name of: *John Doe, as Trustee of the John Doe Living Trust*. If John Doe is the grantor, and Jack Smith is the trustee, the property would need to be transferred into the name of: *Jack Smith, as Trustee of the John Doe Living Trust*.

Until you transfer your property into the living trust, your property will continue to be in your name and will be dealt with according to your states probate laws as if no trust existed.

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Transfer Property – Continued

Real Estate

To transfer real estate you must use a properly executed deed. This may be done by using either a Warranty Deed or a Quitclaim Deed, both of which are available for free at LawDepot.

A Warranty Deed guarantees that the property has good, clear title while a Quitclaim Deed simply transfers property without making any warranty to the title. A Quitclaim Deed is often used between people who know each other, such as family members as there is limited need to warranty the title.

Before transferring any real estate subject to a mortgage, you should consider contacting your insurance company to ensure your title insurance will continue to be valid after the transfer. Additionally, you may want to contact your bank or mortgage company before the transfer to be sure that the loan won't be called as a result of the transfer. Finally, you should review your current mortgage deed in case it contains a due-on-sale clause which allows a lender to declare the loan payable if the property is transferred without the lender's consent although an exemption may apply if the the real estate securing the loan contains less than five dwelling units.¹

Other Property

Ownership in any other valuable property with a formal title or registration can be transferred to the living trust just like if it was between two people. For all remaining tangible personal property that has no title or registration, such as jewelry, clothing, furniture, electronics, etc., the transfer can be accomplished by using a Bill of Sale or Gift Deed, both of which are available for free at LawDepot.

For intangible personal property, such as bank accounts or stocks and bonds, speak to the institution where the accounts/stocks are held to find the best way to transfer ownership.



Taxes

Federal estate taxes become payable when you die. Some states may also charge an estate tax. Since a revocable living trust does not offer any special protection from estate taxes, your trustee can be compelled to pay estate taxes out of the trust if necessary.

¹ Garn-St. Germain Depository Institutions Act of 1982. Under §341(d)(8) of that Act, codified as U.S. Code Sec. 1701j-3(d)(8)

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Taxes – Continued

Exemptions

If you are transferring your primary residence to the living trust, then you need to make sure to complete the application for your homestead tax exemption prior to your state's deadline. You can find more information on your state's Department of Revenue website.

Estates with a total fair market value of less than \$5,340,000 (as of 2014)² will be exempt from paying federal estate tax. If your estate is worth more than this amount, you may wish to contact a qualified tax accountant or tax attorney to help you minimize the payment of estate taxes.



Inform the Trustees

A trustee is bound by certain duties and responsibilities. If the trustee is not the grantor (owner of the assets who initiates the trust) of the living trust, then the trustee needs to be informed of their new responsibilities, and accept their role in the living trust.

- The grantor should make the third party trustee familiar with the terms of the living trust as well as where the original trust document and any related documents, such as deeds or bills of sale for trust assets, can be found.
- The trustee does not own the trust assets. Instead, the trustee has a fiduciary duty to manage and safeguard the trust assets for the sole benefit of the grantor (if living) and any named beneficiaries.
- The trustee cannot mix trust assets with their own assets. All financial accounts must be kept separate and must be accounted for.
- The trustee is responsible for keeping accurate accounting records, filing tax returns, and reporting to the beneficiaries as required by the trust.
- The trustee may use professional help to ensure the trust is properly managed.
- The trustee may be held liable if they recklessly damage trust assets.
- The trustee may receive reasonable compensation in exchange for managing the trust.
- If the trustee becomes overwhelmed by the responsibilities of managing the trust, they may use professional assistance or resign and allow a successor trustee to step in. If no successor trustees remain, a corporate trustee can be named instead.

² <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-Tax>

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Complete your Estate Plan

You need more than a Living Trust to fully manage and protect your estate. A good estate plan will also include a Power of Attorney, Living Will, as well as a simple backup Last Will and Testament to cover any property you have not transferred to your trust before you pass. All these documents, along with explanatory help, are available for free at [LawDepot](#).



Related Documents

The following are documents that may help you complete your Living Trust or finish building your estate plan:

- **Quitclaim Deed**
Transfer ownership of real estate without making any guarantees about the status of the property title at the time of transfer.
<http://www.lawdepot.com/contracts/quit-claim-deed-form/>
- **Warranty Deed**
Transfer ownership of real estate while guaranteeing that you hold clear title at the time of transfer.
<http://www.lawdepot.com/contracts/warranty-deed/>
- **Gift Deed**
Transfer ownership of real estate, personal property, or intellectual property without receiving anything of value in return.
<http://www.lawdepot.com/contracts/gift-deed/>
- **Bill of Sale**
Transfer ownership of personal property.
<http://www.lawdepot.com/contracts/bill-of-sale/>
- **Last Will and Testament**
Manage your estate and provide instructions for the distribution of your property at death.
<http://www.lawdepot.com/contracts/last-will-and-testament-usa/>
- **Power of Attorney**
Give another person authority to act on your behalf should you ever require someone to make decisions for you due to incapacitation.
<http://www.lawdepot.com/contracts/power-of-attorney-forms>
- **Living Will (Health Care Directive)**
Indicate your medical wishes in case you become incapacitated or otherwise unable to consent to your health care treatment.
<http://www.lawdepot.com/contracts/living-will-medical-power-of-attorney/>