

WHAT DO I NEED TO KNOW ABOUT
Living Trusts?



THE BAILEY LAW FIRM
A Professional Corporation

WHAT IS A LIVING TRUST?

A Living Trust is a revocable, inter-vivos or lifetime trust agreement, which is established and signed by you as the Settlor, as the Trustee and as the Beneficiary.



WHAT IS A TRUST?

A Trust is a legal entity by which assets are transferred from one person (settlor), to a second person (trustee), to be used by the trustee for the benefit of a third person (beneficiary).

GRANTOR / TRUSTEE / BENEFICIARY

A **Trust** requires three (3) individuals: (1) the Grantor (or Settlor or Trustor); (2) the Trustee; and (3) the Beneficiary. The Settlor is the person who creates, and normally transfers assets to or funds, the trust. The Trustee is the person who administers, distributes and manages the assets of the Trust. The Beneficiary is the person who receives the benefit from the assets of the trust.

REVOCABLE VS. IRREVOCABLE

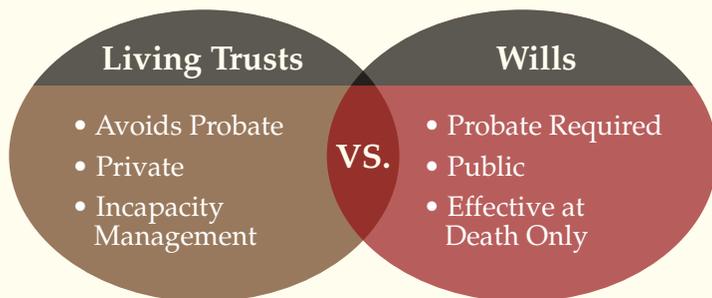
Trusts can be irrevocable or revocable. An **irrevocable** trust is a trust which cannot be amended, revoked or changed. A **revocable** trust is a trust which may be amended, revoked or changed.

INTER-VIVOS VS. TESTAMENTARY

A trust can be inter-vivos or testamentary. An **inter-vivos trust** is a trust which is created or established during the lifetime of the Settlor. A **testamentary trust** is a trust which is created or established upon the death of the Settlor.

WHAT ARE THE BENEFITS OF A LIVING TRUST?

The benefits of a Living Trust are: (1) Avoiding the Cost of Probate; (2) Avoiding the Time Delay of Probate; (3) Planning for Future Incapacity; and (4) Keeping Financial Affairs Private.



AVOIDING THE COST AND TIME DELAY OF PROBATE

Probate is a court process by which your assets are transferred at your death to your heirs. Two disadvantages of probate are: (1) the financial cost to your heirs; and (2) the time delay during which your heirs have limited to no access to their inheritance.

The financial cost of probate ranges from 3% to 5% of the value of your assets.

The time delay of probate ranges from 90 days (minimum in Mississippi), to 4 months (minimum in Tennessee) to 16 months (national average) after you die.

You can avoid probate on specific assets by the following methods: (1) Joint Tenancy with a right of survivorship; (2) Payable or Transfer on Death accounts (POD or TOD); and (3) Beneficiary Designations.

However, Living Trusts are the most comprehensive method of avoiding probate in that Living Trusts allow for all, not some, of your assets to pass outside of the probate process.

PLANNING FOR FUTURE INCAPACITY

If you become disabled, then a friend or family member can manage your affairs with: (1) a Conservatorship; (2) a Durable Power of Attorney; or (3) a Living Trust.

A conservatorship, being a court process, has certain disadvantages including being: (a) time consuming, resulting in a delay in implementation; (b) costly, resulting in the payment by you of attorneys fees, bond premiums, and court costs; and (c) public, resulting in the disclosure of your medical condition, assets and income.

In contrast to a conservatorship, a power of attorney is much less costly, can be implemented immediately, and does not disclose your health and finances as public knowledge. However, a power of attorney has certain disadvantages including: (a) no required accounting of funds spent by your attorney-in-fact; (b) revocable orally, i.e., revocation does not have to be in writing; (c) staleness - the older the power of attorney, the less likely it will be honored; and (d) a conservatorship can revoke a power of attorney.



In contrast to a conservatorship and a power of attorney, the Living Trust offers you more options for planning for your future incapacity.

KEEPING FINANCIAL AFFAIRS PRIVATE

Probate Court files are open to the public. In other words, if your Last Will and Testament is admitted to probate, then anyone can walk into the courthouse and request a copy of your Will. For some people this is not a concern, whereas, for other people, privacy is an important issue.

In contrast to Wills, Living Trusts are private documents which are not filed with any court or clerk and are not made a part of any public record. The primary benefit of privacy is the lack of public knowledge of the names of your beneficiaries, the terms of the distribution of your estate, and the type and amount of your assets and liabilities.

WHY DOESN'T EVERYONE HAVE A LIVING TRUST?

Everyone does not have a Living Trust because: (a) not everyone is educated about the benefits of a Living Trust; (b) a Living Trust, when compared to a Will, costs more money NOW to save your heirs even more money when you die; and (c) a Living Trust requires a greater investment of time NOW to save your heirs even more time when you die.

WHAT BASIC DOCUMENTS COMPRISE A LIVING TRUST?

Your Living Trust should consist of the following basic documents:

(1) Living Trust Agreement; (2) Certificate, Memorandum or "summary" of your Living Trust; (3) Pour-Over or "back-up" Last Will and Testament; and (4) various Transfer Documents such as deeds and letters of instruction necessary to re-title your assets in the name of the Living Trust.

Your Living Trust package should also include: (a) Durable General or Financial Power of Attorney; and (b) Durable Health Care Power of Attorney, Appointment of Health Care Agent, or Advance Health Care Directive/Plan.

WHO SHOULD PREPARE MY LIVING TRUST?

An estate planning attorney with experience in preparing and funding Living Trusts should prepare your Living Trust documents so that the documents will be valid under the applicable federal and state laws, rules and regulations.

THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his Master of Laws (LL.M.) degree in Elder Law with honors from Stetson University College of Law, his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.

ESTATE PLANNING

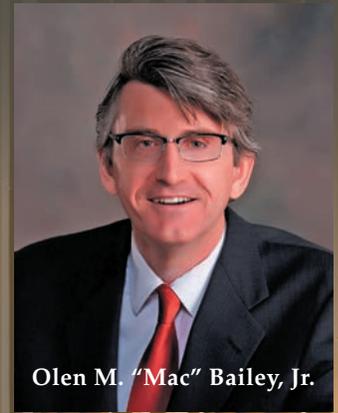
- Wills
- Living Trusts
- Powers of Attorney
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Olen M. "Mac" Bailey, Jr.



Call 901-843-2760 for a consultation
or visit www.thebaileylawfirm.com
5100 Wheelis Dr. Suite 215 - Memphis, TN 38117