

Types of Living Trusts

A Living Trust is officially known as an Inter-Vivos Revocable Trust. It is a revocable statutory trust and in most cases it remains completely under the control of the individual/s who drafted it. In the vast majority of cases the Trustors (the ones who formed the trust) are also the Trustees (the ones who control the trust) and also the Beneficiaries (the ones who receive the benefit from the trust). Wearing all three hats puts them in full control of the trust. They can do anything they want with the trust, even terminate it at will. They control all their assets after they are funded into the trust just as they did before they put them into the trust. Because the trust is revocable it has no tax identity of its own. A tax identification number is not necessary until one of the Trustors dies. A Living Trust gives no liability protection for the assets that are in it and it has no special tax benefits other than doubling the estate tax exemption for a married couple.

There are several different types of Living Trusts to consider.

The “A” Trust \$1,795:

The “A” trust is another way of indicating that the trust is for a single person. This will be a single party trust and it is often used not only for unmarried people but is very effective as a pre-nuptial trust where the client wishes to identify and place their personal assets into trust prior to being married. Assets placed into such a trust under those conditions would be considered sole and separate property and would not be subject to community property in states where that applies.

The A-A Trust \$2,295:

This trust is usually used where two single people are living together as man and wife in a common law relationship or in cases where same gender individuals are living as partners. The distinguishing factor would be that they are in some fashion co-mingling their financial interests or assets (perhaps buying a home together) but are not living under the laws governing legal marriage. This is essentially two “A” trusts but with some differences to provide for the legalities of the situation. **Each applicant needs to complete his own separate application for the A-A Trust.**

The A-B Trust \$1,795:

The AB Living Trust is used for couples that are legally married. This trust gives each spouse the opportunity to individually declare the heirs of the assets that they bring to the trust. It usually uses the spouse as the default beneficiary at the first death of a spouse leaving everything to the surviving spouse. It has another very important feature. In a day and age when people are marrying two and three times or more, it provides that each spouse can individually designate the beneficiaries of their individual assets such as to children from a previous marriage. At the death of a Trustor the deceased's half of the Living Trust becomes irrevocable (it becomes the “B” Trust) preventing the surviving spouse from changing any bequests the deceased spouse may have made, thus insuring that the wishes of the deceased spouse are honored.

The QTIP or A-B-C Trust \$2,295:

This stands for “Qualified Terminable Interest Property” Trust. This trust is used for married couples where their total assets exceed the estate tax exemption. Under normal circumstances estate taxes would have to be paid in full within 9 months of death on the excess over the estate tax exemption. This could create a huge problem if the excess was very large. The current exemption is \$3.5 million per person or \$7 million for a married couple (until 2010). If the estate was worth \$13 million and an exemption of only \$7 million was allowed, it would create a \$6 million dollar taxable excess and the estate tax on that \$6 million could be \$3 million dollars or more. If the estate is not liquid enough to pay the \$3 million dollars of estate tax, something would have to be sold or liquidated from the estate to pay the tax. It would also constitute a sizable reduction to the estate that could be a serious disadvantage to the surviving spouse.

The QTIP Trust provides for relief from this situation moving the due date for payment of the estate tax out to 9 months after the death of the second spouse. The surviving spouse can take income from the trust for maintenance, education, and health maintenance but those privileges are limited. Specific rules apply to this provision governing how much the surviving spouse can remove from the trust and we recommend that you research this provision and familiarize yourself with the specifics.

The QDOT Trust \$2,295:

The QDOT Trust is essentially the same as the QTIP Trust with the exception that it applies to married couples where one or more of the spouses is a non citizen resident alien. To retain the estate tax benefits the trustee of this trust must be a U.S. Citizen. A full explanation of this trust goes beyond the scope of this manual and we suggest that you research this provision and become thoroughly familiar with it especially if you work with foreign nationals who may be living in this country and have assets in excess of \$7 million dollars.

The Special Needs Provision – No charge for clients purchasing a Heritage Living Trust. Situations may occur where a family may have a child with special needs. This could be permanent physical impairment or a mental or emotional impairment requiring a lifetime of care from the parents. In this case a Special Needs Trust may be necessary. This trust is designed to provide for the ongoing care of the child even after the parents die. Often the child will be on government programs or assistance that could be adversely affected by a trust that would leave the child with assets at the parent’s death. A Special Needs Trust provides for arrangements to use proceeds from the Living Trust to care for the child without affecting other valued benefits. **An additional form is needed for this provision and can be found on the Sales Form page.**

The I.L.I.T. Trust - \$700:

This trust is also known as an "Insurance Trust" and its purpose is to remove the death benefits of the clients life insurance from his estate. Life insurance death proceeds are countable in the Estate Tax calculation after death and can boost the total assets of the estate over the exemption limit causing an Estate Tax to occur on the estate. Using the ILIT reduces the after-death estate assets by the amount of the life insurance death proceeds and in many cases reduces or prevents the Estate Tax from occurring altogether. This important point should be considered in larger estates and the ILIT recommended where this situation occurs. **A separate form needed for this trust can be found on the Sales Form page.**

There are a couple caveats to remember when using ILITs:

- (1) The ILIT is a taxable entity that must file its own separate tax returns each year. However, the returns are generally simple and can be handled easily by an accountant; and
- (2) The transfer of an **existing** life insurance policy to an ILIT may result in the policy proceeds being included in the taxable estate if the death of the policyholder occurs within three (3) years of the transfer. The recommended approach is to have the ILIT acquire a **new** policy and then the three year restriction would **not** apply.

All Revocable Heritage Living Trusts come with free lifetime support and free lifetime changes.