

Why You Should Put Your House in a Living Trust

By Virginia Duan

Featuring **Gregory L. Matalon**, Partner at Capell Barnett Matalon & Schoenfeld LLP



What is a living trust, anyway?

Learn how putting your house in one can help you avoid probate hold-ups.

Part of being a responsible homeowner is having a proper estate plan in place. After all, considering the home is generally the largest asset most people own, it's prudent to ensure this asset is passed to the people you wish to leave it to. Just as you protect your finances from debt or use home security to protect your belongings, estate planning with a living trust can be a way to provide your loved ones with a legacy and inheritance. For instance, do you know what will happen to your house if you and/or a co-owner were to die? Did you know that even if your will gives the kids your house, it can be held up for a long time thanks to probate law? Also, if you're in an LGBTQ+ family or have special needs, there are often unique circumstances to consider and account for while estate planning.

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Partner at Capell Barnett Matalon & Schoenfeld LLP

Read on for the benefits of putting your home in a living trust—and what common mistakes to avoid.

CONTINUED ON NEXT PAGE...

What is a living trust?

Like a will, a living trust is a legal document that can be a vital tool for planning and distributing your assets to loved ones. Active as soon as it is created, a living trust assigns a trustee to manage certain assets—such as your house—on behalf of the future beneficiary. It can be either revocable or irrevocable.

A revocable trust means you can change the terms or control of the assets in the trust at any time. This is great for flexibility, but your assets still count as part of your estate when you die. An irrevocable trust allows your assets to no longer be counted as part of your estate, but you sacrifice some rights to control your trust and the assets held in it.

Portia M. Wood, a California-based generational wealth planning attorney, explains that the kind of trust you use depends on your unique situation. “It’s based on three things: your family structure, your asset levels, and your goals,” she says, “and then understanding exactly how your trust works as it relates to those three things.”

How much does a living trust cost?

Well, that depends. Generally, the up-front costs for a living trust will be more expensive than setting up a will or doing nothing at all. As with much of estate planning, costs for setting up a living trust vary by state and region—as well as complexity and customization. “The savings do not occur until later,” says California attorney Jonathan C. Watts. “And a wealthy family with a complicated estate can expect to pay much more than a young person who just bought her first house.”

Why your house should be in a living trust versus a will

But why should you use a living trust instead of a will? Don’t they both tell the law who should be the guardians of your minor children and who should get your money and possessions?



Avoid probate

While all that is true, a will only becomes active after you die and must undergo probate, which is when a court-authorized administrator authenticates and validates a will. Probate can drag on as well as be confrontational if anyone in the family contests the will. However, trusts don’t need to go through probate and thus cannot be contested.

Protect your assets

While we all wish our inheritors will be fiscally responsible, sometimes, that’s just not the case. “If you are worried about leaving assets to young children or family members who are not good with money, you can structure your trust so that a responsible third party, such as a trusted relative or a bank, will manage the trust assets responsibly,” says Watts.

“Depending on the type of trust you create, you can give divorce protection or creditor protection. You can put restrictions on the sale of assets,” adds Wood. “You can say that nobody can sell your home—at least for a period of time. It really depends on each individual person and family’s goals.”

Keep in mind that titling your home can also potentially expose you to creditors depending on your state. “States differ on what creditor protection is available to a homeowner as to their home. Some states protect the debtor’s home from creditors outright,” says Gregory Matalon, JD, in New York. “Some permit a home to be protected from creditors if the debtor’s home is titled with a spouse (the spouse’s name is also on the home’s title) and the spouse is alive after the debtor’s death.”

Common mistakes people make with living trusts

Of course, just because you have a living trust doesn’t mean you’re all set. Here are a few of the most common mistakes people make with their living trusts.

Not placing your home in the trust

If you don’t retitle your home or transfer the deed into the name of the trust, you basically paid a lot of money for a piece of paper: That trust is empty. “If it has not been transferred, it is not covered,” says Wood.

Not notifying tenants of the change in ownership

If you’re retitling a two- (or more-) family home into the trust, and that property has rent-paying tenants, you must also notify them of this change in landlord for rent payment purposes. Plus, you will need to set up a bank account in the name of the trust for rent deposits.

Not notifying the insurance company of ownership change

Make sure you tell your home insurance company about changing the property owner from an individual(s) to that of a trust. Otherwise, the insurance company could deny your claim in an event because the actual property owner—your trust—was not insured.

Not notifying the bank holding the mortgage of the intended transfer

Check to see if your mortgage has a “due on transfer” clause—which means you’d have to pay the mortgage balance if you transfer the home from yourself to the trust.

“Obtaining the bank’s consent for the transfer prior to its execution can avoid a sudden and unwelcome surprise,” says Matalon. “When you transfer the home into a trust, it also may be more difficult to secure additional loans against the home once it is contributed to the trust.”

What LGBTQIA+ and historically marginalized families need to know

For folks who belong to historically and systematically marginalized communities—especially those of color—you might want to consider choosing an attorney who either belongs to your community or works often enough with members of your community to know what might be particularly important to families in your position.

“It sounds like it wouldn’t matter to a lot of people, but it does,” says Wood. “If you don’t understand the cultural element of what somebody is trying to create or do, or the history of it, then you can often overlook or diminish their accomplishments because they don’t look like somebody else’s.”



LGBTQIA+ families should consider transferring assets to one another by trust

Because a trust is a contract, it generally won't go through the probate process—part of which includes notifying your relatives after your death.

“The issue here is that some relatives may not approve of the decedent's sexual orientation and may seek to stop the transfer of property to their life partner,” explains Matalon. “If all the decedent's assets are in trust, they will not need to be probated, and relatives will not need to be contacted. The trust enables the settlor's life partner to receive the trust assets without interference from the decedent's relatives.”

Trust may be an easier way to title assets in your new name

If you have informally changed your given name (i.e.: not legally), a trust can be an easier way to retitle your assets.

Protecting benefits for special needs individuals

If you have a loved one with special needs or who is receiving government services/benefits such as SSI or disability, giving your home outright to them can interrupt or stop these essential services and funds. You can help protect and preserve those benefits and still leave an inheritance by placing your home into a trust.

Gregory L. Matalon (gmatalon@cbmslaw.com) is a partner at Capell Barnett Matalon & Schoenfeld LLP, which has offices in New York and Long Island. His practice focuses on Trust and Estate Planning and Administration.

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