

---

## Revocable Living Trust Packet

### What is a Revocable Living Trust?

A Living Trust is an account into which the person creating the Trust transfers ownership of their assets and property while they are alive. A Living Trust can be revocable or irrevocable, but revocable Living Trusts are the most common. With a Revocable Living Trust, the Trust creator is also the trustee (the person who manages the Trust) and the beneficiary of the Trust while they are alive. The assets and property placed in the Trust can be used, sold, or added to at the Trust creator's discretion. When the Trust creator of a Revocable Living Trust account dies, the Trust acts like a Will, and the person appointed by the Trust creator as the successor trustee will distribute the property or hold it in Trust for someone's benefit in accordance with the Trust creator's wishes. The two main advantages of a Living Trust are privacy and probate avoidance. The Living Trust controls the distribution of all your Trust property upon your death, and therefore does not have to go through the public probate process. This allows your assets to be distributed privately, quickly, and saves the cost of going through a public probate hearing.

### What are the requirements for creating a Trust in NY?

To create a Trust, the Trust creator must be 18 years of age and have mental capacity to form intent and transfer property freely. The Trust must be in writing, have a defined beneficiary, and be signed by the person creating the Trust. The Trust document must also be signed by the Trustee in the presence of two witnesses who also sign the instrument. All signatures must be verified and confirmed in the presence of a Notary Public.

### Who are the parties involved in a Living Trust?

A Living Trust consists of the Trust creator (sometimes referred to as the "Settlor"), the Trustee, and the Beneficiary(ies).

**Trust Creator:** The Trust creator funds the Trust, selects a Trustee, selects the beneficiaries, and establishes the terms of the Trust.

**Trustee:** While alive, the Settlor is the trustee and beneficiary of the Trust. The settlor should name a successor trustee to manage the Trust in accordance with the settlor's instructions after the settlor's death or incapacity, but, if necessary, a trustee will be named or appointed by the court after the settlor's death to oversee the administration and distribution of the assets of the trust.

**Beneficiary:** The beneficiary(ies) are the people who receive gifts from the trust.

### **What are the advantages and disadvantages of a Revocable Living Trust?**

The primary advantages of a revocable Living Trust are that the Trust exists for the settlor's use and benefit during their lifetime. The settlor can use, buy, sell, or transfer Trust property as they want during their lifetime. However, after death, the Trust is irrevocable, and the assets will be distributed to the beneficiaries named in the Trust. Furthermore, the Trust remains private and does not pass through a public probate court for administration, which can expedite the distribution of assets to the beneficiaries. Thus, there are no probate costs associated with the Trust. The disadvantage of a Revocable Living Trust is that there is some expense in setting it up the Trust, and there is some effort required to retitle assets such as your home or vehicles.

### **How does a Living Trust help me avoid probate?**

A Living Trust helps a person avoid probate because the assets transferred into the Trust will be distributed and administered by a trustee to the designated beneficiaries when the trust creator dies, and therefore a public probate proceeding is not required. Although a Living Trust functions like a Will, one way they differ is that Wills must go through a public probate proceeding and Living Trusts do not. Since a Living Trust does not go through the probate process, it keeps your estate private and avoids the time and expense of going through probate.

### **Who should I select as my Trustee?**

You should select a Trustee who you completely trust will protect your interest and the interest of your beneficiaries.

### **What are the duties of the Trustee?**

The Trustee you select will administer and manage your Trust as set forth by the instructions in your Trust should you become incapacitated or die. A Trustee owes the beneficiaries of the Trust fiduciary duties such as duty of loyalty and a duty to invest as a prudent investor. A duty of loyalty means the Trustee has a duty to act in the best interest of the beneficiary(ies) and to not engage in self-dealing for their own benefit unless authorized by the court or authorized and approved by the beneficiaries after full disclosure. A trustee also owes a duty to act like a prudent investor. This means that the Trustee should invest Trust assets in the same way that a reasonable person would treat their own money. One way a Trustee can assure they are meeting the prudent investor standard is to employ the services of an objective third party, financial advisor, or money manager to help them invest the funds.