

Is a living trust expensive?

Not when compared to the costs of probate. How much you pay will depend on how complicated your plan is, type and amount of your assets, if you need additional tax planning, etc. Be sure to ask for an estimate in advance.

Should I have an attorney do my trust?

Absolutely—preferably one who specializes in living trusts. An experienced attorney can provide valuable guidance and assistance for your situation and assure the legal documents are prepared properly. Avoid generic “do-it-yourself” kits and form books—they can’t address every family’s unique needs and can be very dangerous.

Do I lose control of the property in my trust?

Absolutely not. You keep full control over your property. As trustee of your trust, you can do everything you could do before—buy and sell property, make changes, even cancel your trust at any time (remember, it’s revocable).

Do I need a corporate trustee?

No. However some people select a corporate trustee (bank or trust company) to act as their trustee or *co-trustee* now, especially if they don’t have the time, ability or desire to manage their own trusts, or if one or both spouses are ill.

If something happens to me, who has control?

Of course, you can manage your own trust. You and your spouse can be co-trustees, so either can act and have instant control if one becomes incapacitated or dies. If something happens to both of you, or if you are the only trustee, your hand-picked *back-up trustee* will step in.

What does a back-up trustee do?

At physical or mental incapacity, your back-up trustee looks after your care and manages your financial affairs for as long as necessary, using your assets to pay your expenses. When you recover, you automatically resume control. At your death, your back-up pays your debts and distributes your property according to your instructions.

Who can be a back-up trustee?

Back-up trustees can be individuals (adults, children, other relatives or trusted friends) and/or a corporate trustee. If you choose an individual, you should name more than one in case your first choice is unable to act.

How does a living trust save on estate taxes?

For 2006, if the net value of your estate is more than \$2 million (per person), and you die, federal estate taxes must be paid, starting at a rate of 37%. With a properly drafted living trust for a married couple (including bypass trust provisions), you and your spouse can pass up to \$4 million to your beneficiaries free of federal estate tax. This could save you in excess of \$700,000 in estate taxes and thousands or tens of thousands of dollars in probate costs. Similar tax planning can be done with a will, but then you do not avoid probate. The \$2 million federal estate tax exemption will increase in future years, according to the chart, below.

Year	Top Estate Tax Rate	Exemption Amount
2001	55%	\$675,000
2002	50%	\$1,000,000
2003	49%	\$1,000,000
2004	48%	\$1,500,000
2005	47%	\$1,500,000
2006	46%	\$2,000,000
2007	45%	\$2,000,000
2008	45%	\$2,000,000
2009	45%	\$3,500,000
2010	No estate tax	n/a
2011	55%	\$1,000,000

A living trust also makes a great base for additional tax planning, including ways you can give to a charity or foundation so that both of you benefit. Talk to a tax-planning attorney or charity for more information.

Is A Revocable Living Trust Just For Those With Large Estates?

No! It is for everyone who wants to see his or her heirs receive their assets quickly, without undue probate expense and maintain privacy.

Are living trusts new?

Not at all. In fact, they have been used effectively (in one form or another) for hundreds of years. Your banker, trust officer, attorney, financial advisor, broker, CPA, insurance agent or charity is probably very familiar with them.

DAHLBERG PRZYBYLA ASCHENBRENER LAW

is a Wisconsin law firm with practice areas including trusts and estates, real estate, business law, elder law, probate, investment losses, civil litigation, personal injury and wrongful death, criminal and traffic defense, and family law.

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Understanding

LIVING TRUST PROGRAMS

A

Highlights

Brochure

**How to Avoid Probate,
Save Taxes and More.**

Provided By

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I have a will. Why would I want a living trust?

Contrary to what most people have heard (and have been led to believe over the years), a will is probably not the best way to plan your estate—primarily because a will does not avoid probate. In fact, *a will is a one-way ticket to probate*—all wills *must* be verified by the court before they can be enforced.

Also, because a will can only go into effect after you die, it provides no protection if you become physically or mentally incapacitated—a real concern of millions of older Americans—and you could easily end up under the control of the probate court before you die.

Fortunately, there is a traditional alternative to wills and probate. It's called a *revocable living trust*. It avoids all probate and makes sure your plan won't be altered by the court or greedy relatives at your death or disability. For married couples, a marital property agreement is also available.

What is probate?

Probate is the legal process through which the court makes sure that, when you die, your debts are paid and your property is distributed according to your will. If you don't have a will, the state in which you live has written one for you. Probate can also take control if you become physically or mentally incapacitated.

What's so bad about probate?

- **It's expensive.**
Legal/executor fees and other costs must be paid from your estate before anything can go to your heirs. These are usually estimated at 4-10% or more of an estate's gross value (before debts are paid).
- **It takes time.**
Often 1-2 years or longer. During part of this time, the assets are usually frozen so an accurate inventory can be taken, and nothing can be distributed or sold without court approval. If your family needs money to live on, they must ask the court for a living allowance, which it may or may not approve.
- **Your family has no privacy.**
Probate files are open to the public, so anyone (including a business competitor) can see what you owned and who you owed. This also invites disgruntled heirs to contest your will and expose your family to unscrupulous solicitors.

Who should have a living trust?

Married or single, old or young—just about everyone can benefit from a living trust, especially if you have children (even more so if you are a single parent) or own any titled property. If you want to make sure your loved ones (spouse, children or parents) will be spared from probate if something happens to you, you should have a living trust.

But I don't have that much. Why should I be concerned about probate?

Find out the costs of probate in Wisconsin—you might be surprised how much it costs for even a modest estate, especially if real estate is involved. And don't forget the other immeasurable costs (time, no-privacy, etc.)

Doesn't joint ownership avoid probate?

Not really—it usually just postpones it. When one of the joint owners dies, ownership *will* transfer to the other without probate. But when the "second" owner dies, or if both should die at the same time, the property must be probated before it can go to their heirs.

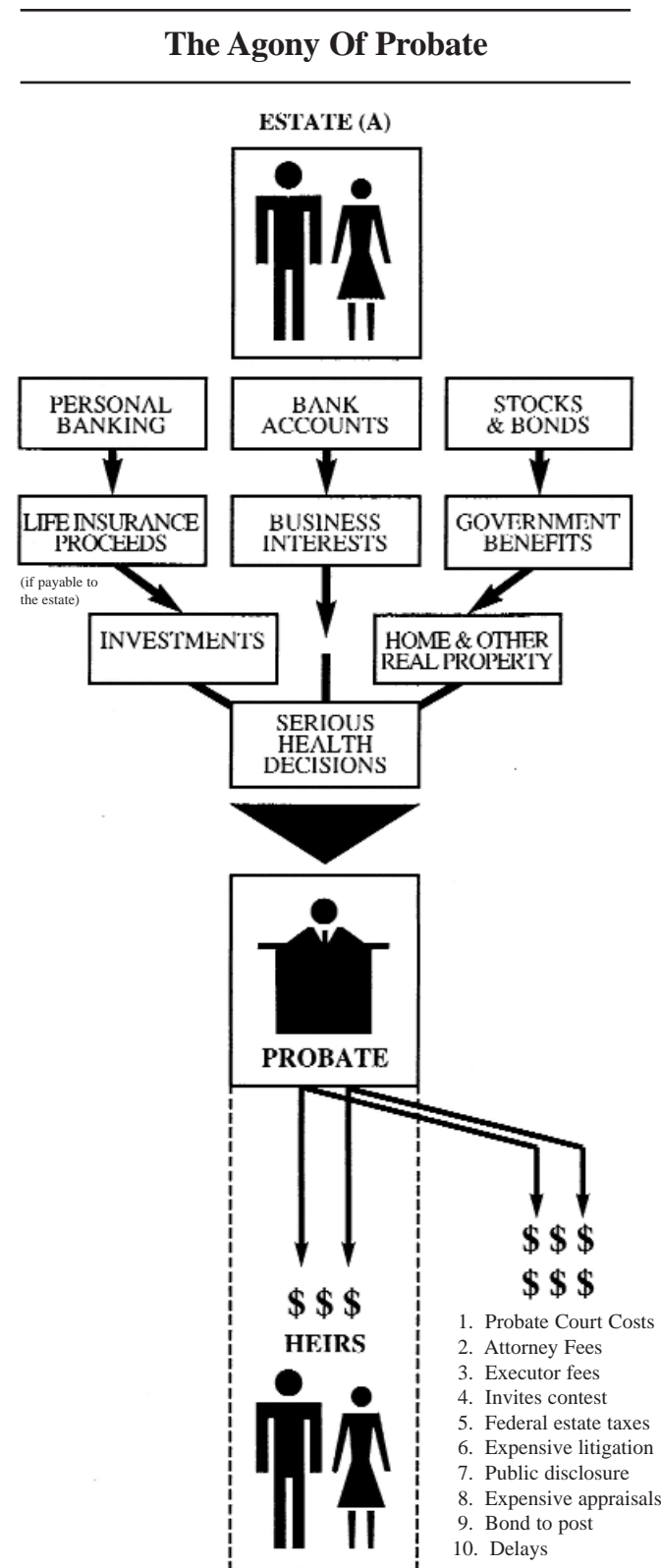
Watch out for other risks, too. When you add someone as a co-owner of your property, you lose control. You expose it to the other owner's debts. Also, you need your co-owner's signature to sell or refinance, and if he/she is incapacitated, you have to get approval from the probate court even if your co-owner is your spouse.

Why should the probate court get involved if someone is incapacitated?

Without proper powers of attorney, and a trust, if you are incapacitated, *only the probate court can sign for you* through conservatorship/guardianship—even if you have a will (remember, a will can only go into effect at death). This process doesn't replace probate at death—your family would have to go through probate twice!

What is a living trust?

A living trust is a legal document that looks a lot like a will. In fact, it does what most people think a will does—and much more. Because there is no probate with a living trust, all expensive court proceedings and delays are eliminated, your privacy is preserved, and emotional stress on your family is minimized. It can reduce/eliminate estate taxes, is extremely hard to contest, and even provides very effective pre-nuptial protection.



	With A Will	Living Trust Programs
At Physical/Mental Incapacity	Probate: Court appoints conservator/guardian who oversees your care, must keep detailed records and reports to court. Court controls your finances and assets, approves all expenses.	<i>No Probate:</i> Your Health Care Agent, Financial Agent, and Trustee manage your financial and health care affairs according to your instructions for as long as necessary.
Probate Costs	You pay all probate costs, legal fees.	None.
At Death	Probate: Court orders your debts paid and possessions distributed. If will is not approved, assets are distributed according to state law, which may not be what you would have wanted.	<i>No Probate:</i> Debts are paid & possessions immediately distributed to beneficiaries under marital property agreement or by back-up trustee according to your written instructions.
Probate Costs	Your estate pays all probate costs and legal fees (often estimated at 4-10% or more of an estate's gross value).	None.
Time	Often 1-2 years or more before your heirs can inherit.	Usually 4-6 weeks for smaller estates; a few months for larger ones.
Flexibility and Control	<i>None:</i> Your property is controlled and distributed by probate court according to state law.	<i>Total:</i> You can change your trust program at any time, even discontinue it. Your property remains under total control of your trust program, even if you are incapacitated. Hard to contest.
Privacy	<i>None:</i> Probate proceedings are public record. Exposes family to unscrupulous solicitors and greedy heirs.	<i>Total:</i> Privacy preserved. No probate. Living trust programs are not public record.