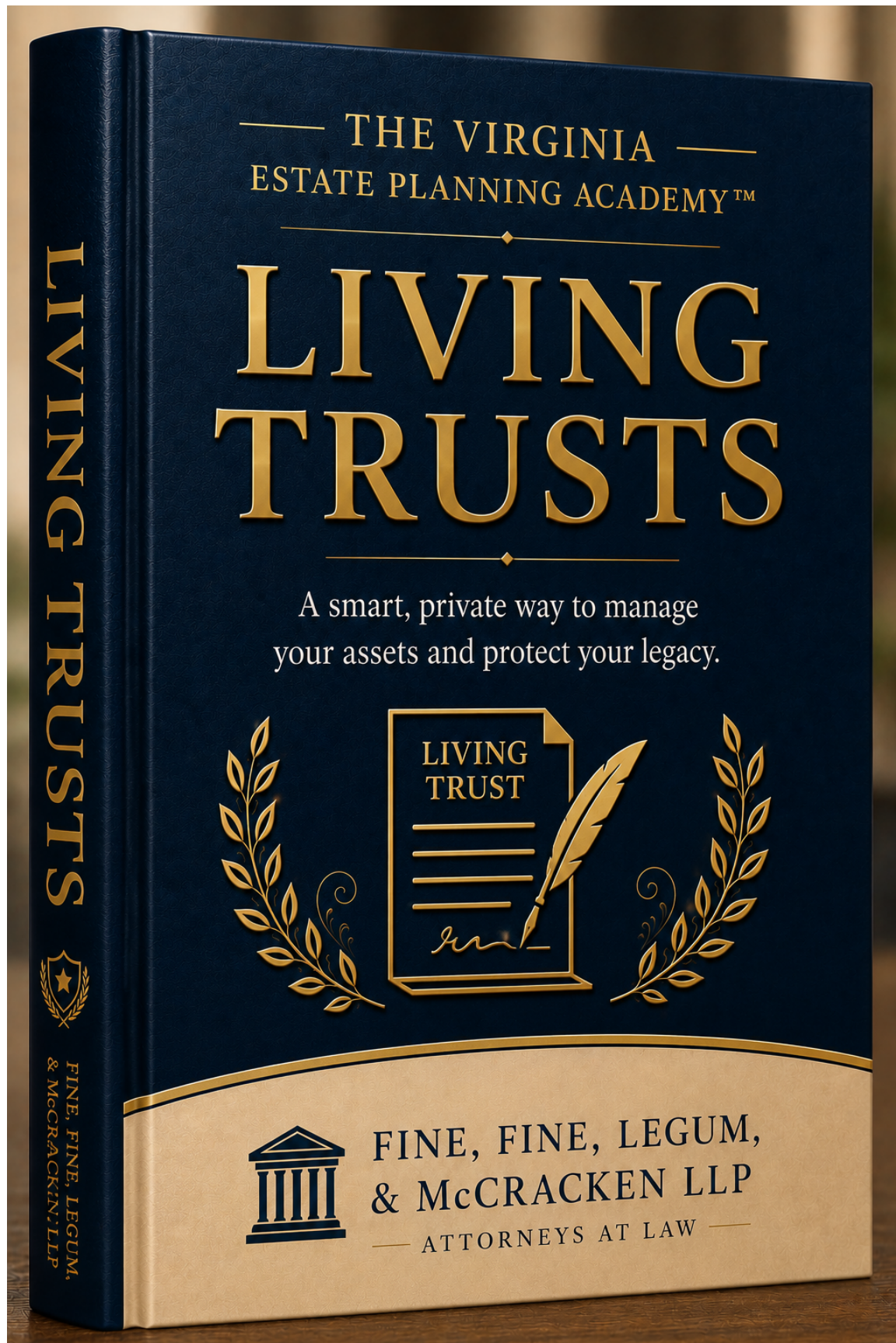




Virginia Estate Planning Academy™

Living Trusts Explained in Virginia

A Guide to Privacy, Protection, and Peace of Mind for Your Family

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Serving Individuals and Families Throughout Virginia

Welcome

Estate planning is about more than deciding who will receive your property after your lifetime. It is also about creating a plan for how your assets will be managed if circumstances change, who will have authority to act when you cannot, and how the property you have accumulated will ultimately pass to the people you choose.

For some individuals and families, a **revocable living trust** can become an important part of that plan.

Living trusts are often associated with substantial wealth, but they can serve practical purposes for many different families. A properly structured living trust can provide continuity in the management of assets, establish a plan for incapacity, provide detailed instructions for beneficiaries, and allow certain trust-owned property to pass outside the probate process.

However, a living trust is not automatically the right solution for everyone, nor does signing a trust document alone accomplish everything people sometimes expect it to do.

This guide explains the fundamentals of living trusts, how they operate as part of a Virginia estate plan, and some of the questions you should consider when deciding whether a living trust may be appropriate for you.

1. What Is a Revocable Living Trust?

A revocable living trust is a legal arrangement created during your lifetime to hold and manage property.

There are generally three important roles involved:

The Grantor or Settlor

The person who creates the trust and establishes its terms.

The Trustee

The person or institution responsible for managing property held in the trust according to those terms.

The Beneficiaries

The individuals or organizations who are entitled to benefit from the trust.

In many revocable living trusts, the person creating the trust also serves as the initial trustee and beneficiary during his or her lifetime. This allows that person to continue managing and using trust property much as before.

Because the trust is **revocable**, its creator generally retains the ability to amend or revoke the trust during his or her lifetime while legally capable of doing so.

2. What Can a Living Trust Accomplish?

A living trust can serve several different purposes within a comprehensive estate plan.

Depending upon your circumstances, a trust may help:

- Provide continuity in the management of assets.
- Establish who will manage trust property if you become incapacitated.
- Provide detailed instructions for distributing property after your death.
- Allow properly funded trust assets to pass without being administered as part of your probate estate.
- Provide ongoing management of an inheritance for children or other beneficiaries.
- Address circumstances in which an immediate outright inheritance may not be appropriate.
- Provide greater privacy concerning property transferred through the trust.
- Coordinate the management of multiple assets under one estate-planning structure.

The value of a living trust therefore extends beyond what happens after death. It can also establish a structure for managing property **during your lifetime**.

3. You Can Remain in Control During Your Lifetime

One of the most common misconceptions about creating a trust is that doing so necessarily means surrendering control over your property.

With a typical revocable living trust, that is not the case.

If you serve as the initial trustee, you ordinarily continue managing trust property according to the terms of the trust. You can buy and sell assets, manage investments, use trust property, and make other permitted decisions while you remain capable.

The trust establishes the legal framework under which the property is held, but it does not necessarily change the practical way you use and manage your assets from day to day.

This distinction is important because a **revocable living trust is fundamentally different from certain irrevocable trusts**, which may involve giving up rights or control over property for particular planning objectives.

4. Planning for Incapacity

A living trust can be especially useful when planning for the possibility that you may someday become unable to manage your own financial affairs.

The trust can name a **successor trustee** and establish when that person is authorized to assume responsibility for managing trust property.

If incapacity occurs, the successor trustee may then manage assets already held within the trust according to its terms.

Depending upon the trust and circumstances, this can provide continuity in matters such as:

- Managing financial accounts.
- Paying expenses.
- Maintaining trust-owned property.
- Managing investments.

- Handling other financial responsibilities involving trust assets.

This is one reason a living trust should be considered as part of an overall **incapacity plan**, rather than simply as a document dealing with death.

A trust does not, however, eliminate the need for other incapacity-planning documents. A comprehensive estate plan may also include a durable power of attorney and an advance medical directive because those documents address authority and decisions that may extend beyond property held in the trust.

5. What Happens to the Trust After Death?

A properly drafted living trust generally provides instructions for what happens after the person who created it dies.

The successor trustee assumes responsibility for administering the trust according to its terms.

Depending upon the circumstances, those responsibilities may include:

- Identifying and safeguarding trust property.
- Managing assets during the administration period.
- Addressing appropriate expenses and obligations.
- Following the trust's distribution instructions.
- Transferring property to beneficiaries.
- Continuing to hold property in trust when required.

The trust can also establish **when and how beneficiaries receive their inheritance**.

For example, rather than leaving substantial property outright to a young beneficiary immediately, a trust may provide for continued management and distributions according to standards established by the person creating the trust.

That flexibility is one of the significant differences between simply naming someone to receive property and creating an estate-planning structure for how that property will be managed.

6. The Most Important Step: Funding Your Trust

Creating and signing a living trust is only part of the process.

A trust generally controls property that has actually been **transferred to or otherwise properly connected with the trust**.

This process is commonly called **funding the trust**.

Depending upon the type of property involved, funding may require:

- Changing title to an asset.
- Preparing and recording a deed.
- Updating ownership records.
- Coordinating financial accounts.
- Reviewing beneficiary designations.
- Determining whether particular assets should or should not be transferred to the trust.

This is critically important.

Someone can have a beautifully drafted living trust and still have assets outside of it. Property remaining individually owned at death may be subject to a completely different transfer process.

A living trust should therefore be thought of as **both a legal document and an asset-management structure**.

7. Does a Living Trust Avoid Probate?

A living trust can help keep **properly funded trust property** outside of the probate estate, but simply signing a trust does not automatically eliminate probate.

Only assets appropriately held by or passing through the trust receive the benefit of the trust structure.

Other assets may pass through beneficiary designations, survivorship arrangements, or other methods, while individually owned property without another transfer mechanism may remain subject to probate.

For that reason, probate planning is only **one aspect** of living-trust planning.

The broader question is whether a trust provides the right structure for managing your particular assets during incapacity and ultimately transferring them according to your wishes.

8. Do You Still Need a Will?

Usually, a living trust is not intended to make every other estate-planning document unnecessary.

A person with a living trust will often also have a **pour-over will**.

A pour-over will generally provide for certain property remaining in the individual's probate estate at death to be transferred into the trust and administered according to its terms.

A will also addresses matters that a living trust may not address in the same manner, including the nomination of a guardian for minor children.

The goal is not necessarily to choose between “**a will or a trust.**”

Instead, the goal is to create a coordinated estate plan in which the appropriate documents work together.

9. Who Should Consider a Living Trust?

There is no single financial threshold at which everyone suddenly needs a living trust.

Whether one is appropriate depends upon your assets, family circumstances, planning objectives, and concerns.

A conversation about living-trust planning may be worthwhile if you:

- Own real estate or multiple significant assets.
- Own property in more than one state.
- Want continuity in asset management if you become incapacitated.
- Want greater control over how beneficiaries receive an inheritance.
- Have minor children or younger beneficiaries.
- Have a blended family or more complex family circumstances.
- Want certain property managed for beneficiaries over an extended period.
- Want to explore reducing the amount of property passing through probate.
- Value greater privacy in the administration and transfer of certain assets.
- Want a centralized structure for managing and ultimately distributing property.

Having one of these circumstances does not automatically mean that you need a living trust. It means the trust may be an estate-planning option worth evaluating.

10. Common Living Trust Mistakes

A living trust is only as effective as its design, implementation, and continued maintenance.

Some common problems include:

Creating the Trust but Never Funding It

A trust cannot accomplish its intended purpose for assets that were supposed to be transferred to it but never were.

Failing to Coordinate Beneficiary Designations

Retirement accounts, life insurance policies, and other beneficiary-designated assets require separate consideration. Beneficiary designations should be reviewed as part of the overall estate plan.

Assuming a Trust Replaces Every Other Document

Powers of attorney, advance medical directives, wills, and other documents may still play essential roles.

Failing to Update the Plan

Marriage, divorce, births, deaths, relocation, retirement, significant changes in assets, and changes in family relationships can all affect an estate plan.

Using a Trust That Wasn't Designed for Your Circumstances

A trust is not simply a form. Its provisions should reflect the family, property, beneficiaries, decision-makers, and objectives of the person creating it.

11. Living Trust Planning Checklist

If you are considering a living trustor already have one ask yourself:

- ☐ What assets do I currently own?
- ☐ How is each significant asset titled?
- ☐ Which assets should be held in the trust?
- ☐ Have assets intended for the trust been transferred?
- ☐ Who should serve as my successor trustee?
- ☐ Who should manage trust property if I become incapacitated?
- ☐ Who should receive my property after my death?
- ☐ Should beneficiaries receive property immediately or over time?
- ☐ Do any beneficiaries require additional protection or management?
- ☐ Are my beneficiary designations coordinated with my estate plan?
- ☐ Do I own property outside Virginia?
- ☐ Have there been significant changes since my estate plan was created?
- ☐ Does my trust still reflect what I want today?

If you cannot confidently answer these questions, your trust or estate plan may benefit from professional review.

Taking the Next Step

A living trust is more than a document designed to transfer property after death.

When properly designed, funded, and coordinated with the rest of an estate plan, it can provide a structure for **managing assets during life, preparing for incapacity, protecting beneficiaries, and carrying out your wishes after your lifetime.**

The important question is not simply:

“Do I need a trust?”

It is:

“What estate-planning structure best accomplishes what I want for myself, my property, and the people I care about?”

An experienced Virginia estate-planning attorney can help you evaluate your circumstances, determine whether a living trust is appropriate, and coordinate the trust with the other components of your estate plan.

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Educational Disclaimer

This guide is provided for general educational and informational purposes only. It is not legal advice and does not create an attorney-client relationship. Estate-planning decisions depend upon individual circumstances and applicable law. You should consult a qualified Virginia attorney regarding your specific situation.