

# Some Assets May Not Belong in Your Living Trust

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A trust can be an effective estate planning tool for clients who desire a level of control over their assets. A trust allows you to place various “rules” and incentives on distributions to beneficiaries. You can direct your trustee to distribute an inheritance to a beneficiary at only certain times, or for certain purposes. For example, many of our parent and grandparent clients direct that the trustee should release funds to a child or grandchild when they graduate college, at a designated age, etc. Other clients who are concerned that a beneficiary will not handle a lump sum of money wisely will instruct the trustee to distribute funds only under certain circumstances or in certain amounts to offer creditor and divorce protection for their child or grandchild.

## **“Testamentary trust” vs. living trust**

A trust can be created within the terms of your will – a “Testamentary Trust” – but there is a downside to this approach. The assets will have to go through Probate, which is costly, time-consuming, and sacrifices your privacy because the will becomes part of the public record that anyone can access. For most people, a better choice is a Revocable Living Trust. It does not go through Probate (a time consuming and costly legal process that occurs after your passing), and dealing with the estate is less onerous for your loved ones.

## **But, not every asset belongs in your living trust**

Despite the benefits a living trust has for most, do not assume that every asset you own belongs in it. Some assets need not go in, and some definitely should not go in. Some examples:

**Maybe:** It is true that an asset that has a designated beneficiary or is jointly owned can avoid probate without being transferred into your living trust. However, it may be subject to the creditors of the joint owner, or the person(s) who gets it may be inconsistent with your overall estate plan. Also, if the trust was established to reduce or eliminate estate taxes, then joint ownership or beneficiary designations can frustrate this intent.

**Yes:** If you own real estate, it is generally prudent to retitle it in the name of your living trust.

**Yes:** Any real property you own in Massachusetts should be placed in your trust. If you own property out of state, retitle that in the name of your living trust, too: if you skip this step, it will be subject to an ancillary probate in the other state. You should always seek advice of an attorney who practices in that other state.

**No:** Qualified plans such as your IRA and 401k should not be placed in your trust. Doing so will produce adverse tax consequences. Though if the trust is properly drafted, it may be possible to name your trust as a beneficiary of the qualified plans.

**Maybe:** Life insurance owned by a decedent normally passes to the named beneficiary. Your beneficiary could be one or more individuals, or your trust.

It is important to meet with an attorney to discuss your specific circumstances and goals and review your assets and family situation. A qualified attorney can help you figure out

whether a living trust is the right tool for you and advise you as to what assets do and don't belong in it.

*The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*