

What is a Living Trust in Canada?



Learn about the intricacies of living trusts, their benefits, how to set one up, tax implications, the legal aspects of trusts, and more.



What is a Living Trust?

A living trust, also called an inter vivos trust, is a legal arrangement where you (the grantor) transfer assets into a trust to manage both during your lifetime and after your death. You typically serve as the initial trustee, managing your assets, and appoint a successor trustee to take over if you become incapacitated or upon your death, making sure your beneficiaries receive the assets as outlined in your trust.

Unlike a will, which takes effect only after death, a living trust is usable immediately after you make it. But that isn't to say that you can't have both a will and a living trust, as there are benefits to each!

How it Works

The creation of a living trust involves the drafting of a trust document that outlines the terms and conditions governing the trust. The grantor names a successor trustee who will take over the management of the trust upon the grantor's incapacity or death. This successor trustee makes sure of the seamless transfer of assets to the trust's beneficiaries according to the grantor's wishes.

Purpose in Estate Planning

The primary purpose of a living trust in estate planning is to provide a flexible and comprehensive mechanism for managing and distributing assets while minimizing potential challenges.

Benefits of a Living Trust in Canada

Establishing a living trust can have various advantages, though it's important to understand that it serves different purposes **compared to estate planning with a will.**



Asset Protection

One of the key benefits of a living trust is asset protection. By placing assets in a trust, they are shielded from potential creditors and legal claims. This protection can be particularly valuable in safeguarding family wealth for future generations.



Privacy

Unlike a will, which becomes a public document when it's probated, a living trust offers a higher level of privacy. The terms and details of the trust remain confidential, allowing for a transfer of assets without public knowledge.



Avoiding Probate

Probate fees and delays can become significant drawbacks in traditional estate planning with a will. A living trust, as a legal entity separate from the estate, circumvents the probate process, making for faster distribution of assets and reducing associated costs.

For more estate planning resources
check out our Learn Centre at
willful.co/learn

Need to create or update your will?

[Get started](#) →



Revocable vs Irrevocable Living Trusts

Understanding the distinctions between revocable and irrevocable living trusts is also a great way to find out if making a trust is the right thing for you.

✓ Revocable Living Trusts

A revocable living trust allows the person who created the trust to make changes or revoke the trust during their lifetime. This flexibility is useful for those who may expect changes in their estate plan, such as getting married, having children, buying a house, or other lifestyle changes.

✓ Irrevocable Living Trusts

An irrevocable living trust cannot be altered or revoked without the consent of the beneficiaries. While this limits flexibility, it provides greater asset protection and may offer potential tax benefits. For example, this means that if you make this type of trust for your children, you cannot change it without your children's consent.

Determining which type of trust is suitable depends on individual circumstances, goals, and preferences. While revocable trusts can often be less expensive upfront, for example, irrevocable trusts could possibly protect assets better in certain circumstances, such as divorce.

Living Trust vs Testamentary Trust

A living trust is created during your lifetime and allows for the ongoing management and distribution of assets.

A testamentary trust is established through a will and comes into effect after you pass. Based on the instructions in your will, this trust lets you provide for minor children or individuals with disabilities through the management and distribution of the assets in your estate.

Living Trust vs Will

While both living trusts and wills are essential components of estate planning, they serve different purposes.

Living trusts are active during life and possibly after death, though you can specify that they end at death too.

They aren't subject to probate so they don't go public, which makes them more private estate planning tools compared to wills.

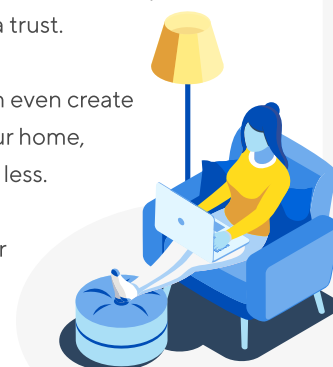
But they can be very costly. In addition to administrative costs associated with trusts, if you are a settlor of a living trust, you need to fund the trust while you are alive.

It can be a lot more expensive than setting up a testamentary trust in your will, which is funded by your estate after you pass away. Wills, on the other hand, relate to your estate, which is something that only forms once you pass away.

Setting up a will can help you address other [end-of-life wishes](#) as well, such as guardianship for your dependants or your funeral wishes. Wills are often much simpler and more affordable than setting up a trust.

In the case of online wills, you can even create your own from the comfort of your home, without lawyers, in 20 minutes or less.

For a more detailed look, read our article [comparing living trusts and wills](#).



How to Set Up a Living Trust in Canada

1 Required Documents

The process of making a living trust begins with drafting the trust document, which outlines the terms and conditions of the trust. Additionally, you'll need a list of assets to be included in the trust as well.

2 Legal Assistance

While it is possible to create a basic living trust independently, seeking legal advice is recommended to navigate the complexities of Canadian trust law as well as the law in your own province.

Living Trust vs. Will

	Living Trust	Will
Can it be active when you're still alive?	✓	No, only after death
Do you name a beneficiary or beneficiaries?	✓	✓
Does it go through probate court?	✗	Usually
Does it need to be witnessed?	✗	✓
Can you include your end-of-life wishes?	✗	✓
Can you name a guardian for minor children?	✗	✓
Can it be made public record?	✗	✓

Did you know?

- 01 57% of Canadian adults have not created a will or estate plan
- 02 66% of Canadians don't know the end of life wishing of their spouse

Give your family more peace of mind than a trust can provide—start your will today

[Get started](#) →

Living Trusts in Canada: Tax Implications

Taxes are something we have to consider for almost every avenue of our lives. Understanding living trust tax implications can help you decide if making one is right for you.

✔ Taxation of Trust Income

In Canada, trusts are subject to taxation on their income. The taxation framework varies between revocable and irrevocable trusts; a revocable trust is generally taxed at the settlor's marginal tax rate, and an irrevocable trust is taxed separately at the trust's own tax rate.

✔ Potential Benefits and Drawbacks

While a living trust can offer certain tax advantages, such as income splitting among beneficiaries, you must also consider the potential drawbacks. For example, when the owner of a revocable trust dies, the assets inside the trust can also be subject to provincial and federal estate taxes.

This is not the case for irrevocable trusts, which is one of their strengths.

Legal Aspects & Canadian Living Trust Laws

Navigating the legal aspects of living trusts in Canada involves understanding the regulatory framework governing trusts. Trusts in Canada are primarily governed by provincial laws, with each province having its own trust legislation.

It can be pretty complex, which is why establishing a living trust is often done with a lawyer so that they can help you navigate through the process and abide by the specific regulations of the province in which you establish your trust.

Frequently Asked Questions



How much does it cost to set up a living trust in Canada? Cost can vary depending on things like complexity, legal fees, and the involvement of professionals. On average, living trust fees with lawyers start at a minimum of \$1,000 and go up from there.

Is a living trust legal in Canada? Yes, and they are recognized as effective tools for estate planning. But it's important to comply with the specific legal requirements and regulations of the province in which the trust is established.

What is the difference between a living trust and a family trust? A living trust is created while you're alive. A family trust is one type of living trust, set up to benefit your family and help with estate planning.

What are the pros and cons of a living trust? Establishing a living trust benefits individuals by providing a legal mechanism for asset protection, privacy, and avoiding probate. Downsides may include the cost of establishing the trust and potential tax implications.

A living trust in Canada is a powerful and flexible tool for effective estate planning.

Remember, you can have both a living trust and a will, as each has its own benefits.

If you'd like to create a will to give your family peace of mind beyond what a trust can provide, [start your will today!](#)

Examples of Living Trusts in Canada

1 Family Succession

An owner of a company establishes a living trust to ensure seamless transition of her family business to her children. With her business assets in the trust, the owner can dictate the terms of succession, provide for family, and protect the business from external claims.

2 Privacy Concerns

An Academy Award-winning actor with significant wealth, and privacy concerns, opts for a living trust to maintain their privacy. With their assets in a trust, they avoid probate and the details of their assets (and who those assets go to) remain confidential, preventing public scrutiny.

