

Understanding Florida Living Trusts

An Educational Overview of Revocable Trusts, How They Work, and When They Help,
with Links to the Florida Trust Code and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What a Trust Is

A **trust** is a legal arrangement in which one person (the **settlor**, also called grantor or trustmaker) transfers property to another (the **trustee**) to hold and manage for the benefit of one or more **beneficiaries** according to written instructions. In Florida, trusts are governed by the **Florida Trust Code**, [Chapter 736, Florida Statutes](#). The trust document is the rulebook; the Trust Code fills gaps and sets limits the document cannot override.

A **revocable living trust** is created during the settlor's lifetime, and the settlor keeps the power to change or cancel it. In the typical arrangement the settlor is *also* the initial trustee and the lifetime beneficiary — so nothing changes day to day. The document names a **successor trustee** to step in on the settlor's incapacity or death and directs how the property is then managed or distributed. A married couple may create a **joint trust** or separate trusts.

An **irrevocable trust**, by contrast, generally cannot be changed by the settlor once created and is used for different purposes (tax planning, asset protection, Medicaid planning, special needs). This report focuses on revocable trusts and notes irrevocable trusts only where the distinction matters.

2. What a Revocable Trust Does — and Does Not — Accomplish

What it does

- **Avoids probate for assets titled in the trust.** Property owned by the trustee at the settlor's death is not part of the probate estate and is administered privately by the successor trustee under the trust's terms, without court supervision.
- **Provides for incapacity.** If the settlor becomes unable to manage affairs, the successor trustee manages trust property without a guardianship proceeding under [Chapter 744](#). The document should state how incapacity is determined (for example, by one or two physicians' letters).
- **Keeps terms private.** A will becomes a public court record when probated; a trust generally does not.
- **Allows staged or protective distributions.** Shares can be held for young, disabled, or financially inexperienced beneficiaries, distributed at ages or milestones, or held in a special needs trust so a disabled beneficiary keeps public benefits.
- **Simplifies multi-state ownership.** Real estate in another state, if titled in the trust, avoids a second ("ancillary") probate there.

What it does not do

- **It does not protect assets from the settlor's own creditors.** Because the settlor can revoke the trust, Florida law treats trust property as reachable by the settlor's creditors during life, and the trust must pay the expenses and claims of the settlor's estate after death. See [§ 736.0505\(1\)\(a\)](#) and [§ 736.05053, Fla. Stat.](#)
- **It does not reduce income or estate taxes.** A revocable trust is a "grantor trust" — the settlor reports all income on his or her own return, and the assets are in the settlor's taxable estate ([26 U.S.C. §§ 671–677](#); [26 U.S.C. § 2038](#)).

- **It does not help with Medicaid eligibility.** Assets in a revocable trust are counted as available to the settlor under federal law ([42 U.S.C. § 1396p\(d\)\(3\)\(A\)](#)) and Florida's eligibility manual.
- **It does nothing for assets that are never transferred into it.** This is the single most common failure (Section 5).
- **It does not override the rights of a surviving spouse** to the elective share or protected homestead (Section 6).

3. How a Florida Trust Is Created

Under [§ 736.0402, Fla. Stat.](#), a trust is created when a settlor with capacity indicates an intention to create a trust, names a definite beneficiary (or a charitable or animal-care purpose), gives the trustee duties to perform, and the sole trustee is not also the sole beneficiary. The trust must be **funded** with at least some property to exist; many trusts are initially funded with a nominal amount and then receive the settlor's assets.

Signing formalities

Florida requires the **testamentary aspects** of a revocable trust — the provisions that say who receives property after the settlor's death — to be executed with the same formalities as a will: signed by the settlor in the presence of **two attesting witnesses**, who sign in the settlor's presence and each other's. See [§ 736.0403\(2\)\(b\), Fla. Stat.](#) A notary is not required for validity, but trust documents are routinely notarized because a notarized signature is self-authenticating and is expected by title companies and financial institutions. A trust that fails these formalities may be valid for lifetime purposes yet **fail to pass property at death**, sending those assets through intestacy instead.

The pour-over will

A trust is nearly always paired with a **pour-over will** — a short will that leaves anything still in the settlor's individual name at death to the trustee of the trust, so it is distributed under the trust's terms. See [§ 732.513, Fla. Stat.](#) Assets that reach the trust through a pour-over will *do* go through probate first; the will is a safety net, not a funding method. The pour-over will is also where a guardian for minor children is nominated.

4. Typical Provisions in a Revocable Trust

- **Name of the trust and date** (used in asset titles, e.g., “Jane Doe, Trustee of the Jane Doe Revocable Trust dated ____”).
- **Settlor's reserved rights** — to revoke, amend, add or remove property, and change trustees and beneficiaries. See [§ 736.0602](#).
- **Lifetime administration** — all income and principal available to the settlor; how incapacity is determined; powers of the successor trustee during incapacity.
- **Administration at death** — payment of expenses, debts, and taxes; specific gifts; division into shares; outright or continuing trusts for beneficiaries; what happens if a beneficiary dies first; ultimate (“remote contingent”) beneficiaries.
- **Homestead provisions** — directions consistent with the Florida Constitution (Section 6), and language preserving homestead protection under [§ 736.151](#).

- **Successor trustees** — individuals, a bank or trust company, or both; order of succession; how a vacancy is filled; compensation ([§ 736.0708](#)).
- **Trustee powers** — usually incorporating the statutory powers in [§§ 736.0815–736.0816](#).
- **Spendthrift clause** — protecting a beneficiary's interest from the beneficiary's creditors to the extent [§§ 736.0502–736.0503](#) allow.
- **Accounting and notice provisions** — within the limits of the trustee's non-waivable duties (Section 7).
- **Governing law, severability, and signature pages** with witness and notary blocks.

5. Funding — The Step That Makes the Trust Work

A trust controls only property **titled in the trustee's name** or payable to the trust. A beautifully drafted trust that is never funded avoids nothing. Funding typically involves:

- **Real estate** — a deed from the owner to the trustee, recorded in the county official records. Florida deeds to a trustee should include the trustee's powers under [§ 689.073, Fla. Stat.](#), so title companies and buyers can rely on the trustee's authority. A deed of homestead into a revocable trust generally does not affect the homestead tax exemption or Save Our Homes cap when the settlor retains the right to occupy, but owners should confirm with the county property appraiser. A transfer to a revocable trust is not a sale and, when unencumbered, is subject only to minimum documentary stamp tax; mortgaged property has its own rules under [§ 201.02](#). Lenders are generally barred by federal law from calling a mortgage due because of a transfer to a revocable trust in which the borrower remains a beneficiary and occupant ([12 U.S.C. § 1701j-3\(d\)\(8\)](#)).
- **Bank and brokerage accounts** — retitled into the trust, or kept individually with the trust named as payable-on-death / transfer-on-death beneficiary.
- **Retirement accounts (IRAs, 401(k)s)** are **not** retitled; doing so is a taxable distribution. Instead, beneficiary designations are coordinated, usually naming individuals directly or, in some cases, the trust, with attention to the distribution rules in [26 U.S.C. § 401\(a\)\(9\)](#).
- **Life insurance and annuities** — the trust is often named as primary or contingent beneficiary.
- **Vehicles** — frequently left outside the trust, because Florida permits title transfer to heirs without probate under [§ 319.28](#).
- **Tangible personal property** — assigned to the trust by a general assignment, and/or disposed of by a separate written list.
- **Business interests** — assignment of LLC membership or stock to the trustee, subject to the operating agreement or shareholder agreement.

A trustee may furnish a **certification of trust** under [§ 736.1017, Fla. Stat.](#), to banks and title companies instead of the full document, confirming the trust's existence and the trustee's authority while keeping the dispositive terms private.

6. Homestead, Spousal Rights, and Other Limits

- **Protected homestead.** Placing the homestead in a revocable trust does not escape the constitutional restriction on devising homestead when a spouse or minor child survives ([Art. X, § 4\(c\)](#)).

[Fla. Const. § 732.4015](#)). Trust provisions that would leave the homestead to someone other than the spouse while a spouse or minor child survives are ineffective, and the homestead passes by statute. The creditor exemption for homestead is preserved for property held in a trust under [§ 736.151](#).

- **Elective share.** Property in a revocable trust is included in the surviving spouse's 30% elective estate ([§ 732.2035](#)) unless waived in a valid marital agreement.
- **Creditors of the settlor's estate.** The successor trustee must pay the probate estate's expenses and valid claims to the extent the probate estate is insufficient ([§ 736.05053](#)), and must file a **notice of trust** with the probate court upon the settlor's death ([§ 736.05055](#)).
- **Contest limitations.** A trust may not be contested while the settlor is alive ([§ 736.0207](#)), and challenges after death are subject to time limits once the trustee gives the required notice.

7. The Trustee's Duties

A trustee is a **fiduciary** — held to a high standard of loyalty and care. The Florida Trust Code imposes duties the trust document cannot waive, including the duty to administer the trust in good faith and in the beneficiaries' interests, the duty of loyalty, the duty to act impartially among beneficiaries, and, once the trust becomes irrevocable (at the settlor's death), the duty to **keep qualified beneficiaries reasonably informed** and to provide an **annual accounting**. See [§§ 736.0801–736.0817](#) and [§ 736.0105](#) (mandatory rules). A successor trustee who is also a beneficiary should expect to document decisions carefully and keep trust funds strictly separate from personal funds. Trustees are entitled to reasonable compensation unless the document provides otherwise, and may hire professionals at the trust's expense.

8. Medicaid and Long-Term Care — Where Revocable Trusts Do Not Help

Because the settlor can revoke the trust and reach its assets, federal and Florida Medicaid rules treat **all assets of a revocable trust as available to the settlor** for eligibility purposes, and transfers into a revocable trust are not penalized but also provide no protection. See [42 U.S.C. § 1396p\(d\)\(3\)\(A\)](#) and the Florida DCF [ESS Policy Manual, Chapter 1600, passages 1640.0576.01–.11 \(Trusts\)](#). After death, Florida's estate-recovery statute ([§ 409.9101](#)) reaches the probate estate; assets in a trust are outside the probate estate under current Florida law, but the trustee's obligation to pay estate claims under [§ 736.05053](#) means the interaction is not simple. Planning for long-term care generally involves **irrevocable** trusts, specific statutory tools such as special needs trusts under [42 U.S.C. § 1396p\(d\)\(4\)](#), and the five-year look-back — none of which this report addresses in detail.

9. Trust or Will? Questions People Weigh

There is no universally correct answer; the choice depends on the assets, the family, and the goals. Points commonly considered:

- **Size and type of estate.** An estate that is already mostly non-probate (beneficiary designations, joint ownership, a Lady Bird deed on the home) may gain little from a trust. An estate with multiple properties, out-of-state real estate, or a business often gains a great deal.

- **Incapacity planning.** A trust with a successor trustee is often more readily accepted by financial institutions than a power of attorney alone, though both are usually used together.
- **Beneficiary circumstances.** Minor children, a beneficiary with a disability receiving public benefits, a beneficiary with creditor or addiction problems, or a blended family all point toward continuing trusts.
- **Cost and upkeep.** A trust costs more to create and requires discipline to keep funded as assets change. A will is simpler up front but routes assets through probate.
- **Privacy and speed.** Trust administration is private and can begin immediately; probate is public and follows court timelines.

10. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 736, Fla. Stat. — Florida Trust Code](https://www.flsenate.gov/Laws/Statutes/2025/Chapter736)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter736>

[§ 736.0105 — Default and mandatory rules](https://www.flsenate.gov/Laws/Statutes/2025/736.0105)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0105>

[§ 736.0207 — Trust contests](https://www.flsenate.gov/Laws/Statutes/2025/736.0207)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0207>

[§ 736.0402 — Requirements for creation](https://www.flsenate.gov/Laws/Statutes/2025/736.0402)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0402>

[§ 736.0403 — Trusts created in other jurisdictions; formalities for testamentary aspects](https://www.flsenate.gov/Laws/Statutes/2025/736.0403)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0403>

[§§ 736.0502–736.0503 — Spendthrift provisions; exceptions](https://www.flsenate.gov/Laws/Statutes/2025/736.0502)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0502>

[§ 736.0505 — Creditors' claims against settlor](https://www.flsenate.gov/Laws/Statutes/2025/736.0505)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0505>

[§ 736.05053 — Trustee's duty to pay expenses and obligations of settlor's estate](https://www.flsenate.gov/Laws/Statutes/2025/736.05053)

<https://www.flsenate.gov/Laws/Statutes/2025/736.05053>

[§ 736.05055 — Notice of trust](https://www.flsenate.gov/Laws/Statutes/2025/736.05055)

<https://www.flsenate.gov/Laws/Statutes/2025/736.05055>

[§ 736.0602 — Revocation or amendment of revocable trust](https://www.flsenate.gov/Laws/Statutes/2025/736.0602)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0602>

[§ 736.0708 — Compensation of trustee](https://www.flsenate.gov/Laws/Statutes/2025/736.0708)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0708>

[§§ 736.0801–736.0817 — Duties and powers of trustee](https://www.flsenate.gov/Laws/Statutes/2025/736.0813)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0813>

[§ 736.1017 — Certification of trust](https://www.flsenate.gov/Laws/Statutes/2025/736.1017)

<https://www.flsenate.gov/Laws/Statutes/2025/736.1017>

[§ 736.151 — Homestead property held in trust](https://www.flsenate.gov/Laws/Statutes/2025/736.151)

<https://www.flsenate.gov/Laws/Statutes/2025/736.151>

[§ 736.0408 — Trust for care of an animal](https://www.flsenate.gov/Laws/Statutes/2025/736.0408)

<https://www.flsenate.gov/Laws/Statutes/2025/736.0408>

[§ 732.513 — Devises to trustee \(pour-over wills\)](https://www.flsenate.gov/Laws/Statutes/2025/732.513)

<https://www.flsenate.gov/Laws/Statutes/2025/732.513>

[§ 732.2035 — Property entering into computation of elective estate](https://www.flsenate.gov/Laws/Statutes/2025/732.2035)

<https://www.flsenate.gov/Laws/Statutes/2025/732.2035>

[§ 732.4015 — Devise of homestead](https://www.flsenate.gov/Laws/Statutes/2025/732.4015)

<https://www.flsenate.gov/Laws/Statutes/2025/732.4015>

[Florida Constitution, Article X, § 4 — Homestead](https://www.flsenate.gov/Laws/Constitution)

<https://www.flsenate.gov/Laws/Constitution>

[§ 689.073 — Powers conferred on trustee in recorded instrument](https://www.flsenate.gov/Laws/Statutes/2025/689.073)

<https://www.flsenate.gov/Laws/Statutes/2025/689.073>

[§ 201.02 — Documentary stamp tax on deeds](https://www.flsenate.gov/Laws/Statutes/2025/201.02)

<https://www.flsenate.gov/Laws/Statutes/2025/201.02>

[§ 319.28 — Transfer of vehicle title by operation of law \(no probate\)](https://www.flsenate.gov/Laws/Statutes/2025/319.28)

<https://www.flsenate.gov/Laws/Statutes/2025/319.28>

[Chapter 744, Fla. Stat. — Guardianship \(the proceeding a funded trust helps avoid\)](https://www.flsenate.gov/Laws/Statutes/2025/Chapter744)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter744>

[§ 409.9101 — Medicaid Estate Recovery Act](https://www.flsenate.gov/Laws/Statutes/2025/409.9101)

<https://www.flsenate.gov/Laws/Statutes/2025/409.9101>

[DCF ESS Program Policy Manual, Chapter 1600 \(Assets\) — Trusts passages 1640.0576](https://ffic.myflfamilies.com/manual/1630.pdf)

<https://ffic.myflfamilies.com/manual/1630.pdf>

[42 U.S.C. § 1396p — Medicaid: treatment of trusts; transfers; estate recovery](https://www.law.cornell.edu/uscode/text/42/1396p)

<https://www.law.cornell.edu/uscode/text/42/1396p>

[26 U.S.C. §§ 671–677 — Grantor trust rules](https://www.law.cornell.edu/uscode/text/26/676)

<https://www.law.cornell.edu/uscode/text/26/676>

[26 U.S.C. § 2038 — Revocable transfers included in gross estate](https://www.law.cornell.edu/uscode/text/26/2038)

<https://www.law.cornell.edu/uscode/text/26/2038>

[26 U.S.C. § 1014 — Stepped-up basis at death](https://www.law.cornell.edu/uscode/text/26/1014)

<https://www.law.cornell.edu/uscode/text/26/1014>

[26 U.S.C. § 401\(a\)\(9\) — Required distributions from inherited retirement accounts](https://www.law.cornell.edu/uscode/text/26/401)

<https://www.law.cornell.edu/uscode/text/26/401>

[12 U.S.C. § 1701j-3 — Due-on-sale clauses; exemption for transfers to revocable trusts](https://www.law.cornell.edu/uscode/text/12/1701j-3)

<https://www.law.cornell.edu/uscode/text/12/1701j-3>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rrtfb/)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

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Respectfully prepared for your education,

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