

# Your Trust Guide

The Importance of Having A Trust For  
Every Grandparent, Parent and Child In  
Your Family...

*...and How to  
Avoid Probate*

by Attorney

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This book, "*Your Trust  
Guide*," can be copied and  
distributed to assist others.



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# Robert H. Farley, Jr.

## Attorney at Law

Attorney Robert H. Farley, Jr., a graduate of the Northwestern University School of Law, has been providing legal representation to Seniors, Parents and Families for over 25 years in the areas of Living Trusts for Adults and Trusts for Children and Grandchildren.

Attorney Farley also drafts and creates Special Needs Trusts in order for the special needs “disabled person” to receive an inheritance and still qualify for government benefits. Attorney Farley’s commitment to protect the legal rights of the elderly and disabled is demonstrated by his success in 7 Class Action Lawsuits. No other attorney in the United States has achieved this level of success for persons with disabilities.

## The Benefits of Having a Living Trust or Trusts for Your Family

### Living Trust

#### 1. What is a Living Trust?

A Living Trust holds your assets in Trust for your benefit or someone else’s benefit (spouse). Upon your death or the death of you and your spouse, the assets are transferred to your designated beneficiaries by the person(s) who you previously chose to be the successor Trustee(s) of your Living Trust. The terms of the Living Trust can be changed by you during your lifetime, which is why this Living Trust is revocable.

#### 2. Living Trust Avoids Probate

You and your spouse, if married, can set up a Living Trust where your house, bank accounts, stock brokerage accounts and other assets, can be transferred into the Living Trust to avoid probate. You and/or your spouse would be the Trustee(s) of your Living Trust. The Trust would provide that if you became incapacitated or passed away, then your successor Trustee(s) would be able to access your funds and transfer your assets to the designated persons in your Trust, avoiding probate. The Living Trust can provide that you can make amendments or changes to your Trust during your lifetime.

### **3. Living Trust Assists in the Event You Become Incapacitated**

You can provide in the Living Trust in that because of mental deterioration or physical incapacity, that you are not fully able to manage matters affecting your own personal welfare or financial welfare, then you appoint a successor Trustee or Trustees to serve due to your inability. The Living Trust would state that any Trustee shall be deemed disabled or incapacitated when any physician familiar with their condition certifies that they are either unable to transact ordinary business or unable to properly administer the Trust for your benefit.

## **Trusts for Your Family**

### **4. Trusts for Your Adult Children (18+)**

If you do not want your adult child to receive his or her full inheritance at the time of your death, then a Trust can be established to provide that the monies in the Trust can be used for their support, education and care by the Trustee(s) you selected. You can provide when the child reaches a certain age then he or she will receive their full inheritance or you can provide that they get a certain percentage at a certain age and the rest at a later date.

The Trustee(s) are basically serving as a defacto parent in that they are administering the Trust for the best interest of the child. Sometimes the Trust is established for the child's lifetime in order to protect the adult child from being taken advantage of. For example, the Trust can own the house or condo and the adult child can reside in the residence, but he or she cannot sell or give it away as only the Trustee(s) have that power.

### **5. Trusts for Your Minor Grandchildren or Minor Children (under the age of 18)**

If you do not want your adult child to receive his or her full inheritance at the age of 18, then a Trust can be established to provide that the monies in the Trust can be used for their support, education and care by the Trustee(s) you selected. You can provide when the child reaches a certain age then he or she will receive their full inheritance or you can provide that they get a certain percentage at a certain age and the rest at a later date.

### **6. Special Needs Trusts for Grandchildren or Children**

Parents of a disabled child should establish a "Special Needs Trust" to benefit the child. A "Special Needs Trust" allows the parents or anyone to direct money to the trust so that the funds can be used by the Trustee(s) to benefit the disabled person without making him or

her ineligible for the receipt of governmental benefits based on need such as Supplemental Security Income (SSI), Medicaid and its medical benefits. Without a “Special Needs Trust” the disabled person may be required to exhaust almost his or her inheritance before becoming eligible for government benefits or the funds may be required to be paid over to the government as reimbursement for care and expenses of the disabled person.

## **Estate Planning Tools to Assist You**

### **7. Powers of Attorney for Property and Healthcare**

You should sign both the Power of Attorney for Property and the Power of Attorney for Healthcare to provide guidance to your Agent when you are not able to act. In order for a Power of Attorney to be valid, the person granting or signing the Power must have the legal capacity to consent and fully understand what he or she is doing. If a person does not sign a Power of Attorney and then becomes mentally incapacitated, then someone may need to go to Court in order to be appointed Guardian.

### **8. Illinois Small Estate Affidavit**

Assets that are put into the Living Trust will avoid Probate. If there are assets that were not put into the Living Trust, such as small bank accounts or car titles, probate can still be avoided if those assets outside of the Living Trust total less than \$100,000. By completing an Illinois Small Affidavit, these assets can be transferred to the rightful person(s) without going through Probate.

## **Medicaid Paying For Nursing Home Care**

### **9. Qualifying for Medicaid to Pay for Nursing Home**

**A. Income Limits:** For a single person or when one spouse of a married couple is applying for Medicaid nursing home care, only the income of the applicant is counted. So, the income of the other spouse, who is not seeking nursing home care is disregarded. The income limit for a single person or one spouse seeking nursing home care is \$1,063 per month. Examples of income are wages, pension payments, Social Security, IRA withdrawals and dividends. If the person’s monthly income is greater than \$1,063 per month, then he or she may have to spend down or pay Medicaid the difference in order to qualify. However, the spouse of the person applying for nursing home care, is permitted a Minimum Monthly Maintenance Needs Allowance (MMMNA), which is the minimum amount of monthly

income to which they are entitled. In 2020, the MMMNA in IL is \$2,739 / month, which means applicant spouses are able to transfer their income, or a portion of their income, to their non-applicant spouse to bring their monthly income up to this level. This rule allows Medicaid applicants to transfer income to their non-applicant spouses to ensure they have sufficient funds with which to live.

**B. Assets Limits:** For Medicaid eligibility, there are many assets that are considered exempt (non-countable). Exemptions include personal belongings, household furnishings, an automobile, irrevocable burial trusts, and one's primary home, given the Medicaid applicant or their spouse lives in it and the home equity value is under \$595,000 (in 2020).

For those assets which are not exempt, the non-exempt assets limit is \$2,000 for the person seeking nursing home care. However, for married couples, as of 2020, the community spouse (the non-applicant spouse of a nursing home Medicaid applicant) can retain up to a maximum of \$109,560 of the couple's joint assets.

### **C. Medicaid Power to Recover Benefits Paid from Estates and Liens**

Under Federal law, Illinois must seek recovery of Medicaid payments from the individual's Estate to recover the costs of nursing home care. There are a few exceptions. The State cannot recover from the Estate of a Medicaid recipient who has a surviving spouse until after the spouse passes away. After the spouse dies, the State may file a claim against the spouse's Estate to recover money spent for the Medicaid recipient's care. The State also cannot recover from the Estate if the Medicaid recipient had a child who is under age 21 or a child who is blind or disabled.

Medicaid may place a lien on any real estate owned by a Medicaid recipient during that person's lifetime. However, the State cannot impose a lien on real estate, if a spouse, a disabled or blind child, a child under age 21, or a sibling with an equity interest in the house is living there.

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