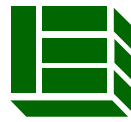


Understanding Living Trusts



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Living trusts allow you to control who gets your assets after you die. However, there are many more reasons for creating a living trust. For instance, a living trust can help your beneficiaries avoid the expense and delay of probate. Probate can last as long as three years and can take up to 10% of your estate's value. A living trust can also provide you with more privacy than a will because you don't have to register it with the courts in probate. A living trust can help avoid certain estate taxes if prepared properly. Finally, a living trust allows you to hand over management of your assets to someone else if you are unable to manage your assets yourself.

THE ANATOMY OF A LIVING TRUST

A trust allows you to gather together in one document all your significant property. This is important if you want to make sure that your property is distributed easily and quickly after your death. The trust, not you, owns that property. You can do what you want with that property—you can even transfer some property out of the trust or add property to it. A living trust is an easy way to keep track of all your assets and manage them as a single unit. Most importantly, a trust allows you to provide for the quick and efficient distribution of your property to loved ones when you die.

A living trust is created with a document known as a Declaration of Trust. This is the legal document which names your beneficiaries, describes your trust property, and provides for the terms of its transfer. The living trust is managed by the trustee; in most cases, the initial trustee is the person who forms the living trust. You may later designate someone else or an institution, like a bank, to act as a trustee. The trustee is also responsible for managing the property covered by the trust.

PROBATE AND REASONS TO AVOID IT

Probate is the legal process that the courts use to implement a will. Probate typically takes six months to three years to complete. It may also require the service of an attorney. Even if you die without a will your estate must still pass through the probate system. In that case, the court will decide how to distribute your estate among your relatives. The typical probate procedure includes the following steps:

1. The will is filed with the local probate court (and becomes public record).
2. Your family conducts an inventory of your property.
3. Your property is appraised.
4. All debts, including death taxes, are paid.
5. The court validates the will.
6. Court costs, attorney's fees and executor's fees are paid from the estate.
7. Then, and only then, the remainder of the estate is distributed to your loved ones.

A living trust can help avoid probate. The reason for this is because your assets are placed into a trust. You do not "own" the assets, the trust does. You can still control the trust assets as if they were your own, but when you die, you do not "own" the trust property and therefore, you avoid probate for the assets placed into the trust.

However, as previously mentioned, you will still need a simple will for any property not included in the trust. So long as all of your significant property is transferred into the living trust, then probating this pour-over will should be rather a simple process.

DISTRIBUTIONS FROM THE TRUST

1. **Primary Beneficiaries:** Beneficiaries that are designated to receive specific property.
2. **Alternate Beneficiaries:** Beneficiaries that receive property if the primary beneficiary dies before you.
3. **Residuary Beneficiaries:** Beneficiaries that receive all property not left to either the primary and alternate beneficiaries.

In general, you may choose anyone or any entity you wish to be your beneficiaries. In a community property state, you are not required to leave anything to your spouse. That is because both spouses are deemed to own half of everything earned during marriage. However, in separate property states, your spouse may have a strong claim to set aside part of your trust if you leave him or her less than one-third to one-half of your property. In addition, minor children in many states have the right to inherit the family residence. If a court finds that the challenger has a valid claim, your trust is not entirely invalidated. The court will modify the trust to accommodate the claims of your spouse and/or children. It is relatively easy to avoid these problems if you are careful when designating your beneficiaries.

You can leave property to children through a living trust. If you desire, you can keep the property in a trust and designate an adult to manage the property on behalf of the child. This is called a children's sub-trust. The sub-trust will end when the conditions you specify are satisfied; for example, when your child turns 21 or when she graduates from college. It is important to remember that you cannot designate a guardian for your minor children through a living trust; you should do this through a traditional will. If you want to exclude a child from your trust you should state your intention explicitly. If it appears that you unintentionally overlooked one of your children in your trust, a court may modify the trust for that child's benefit.

COMMONLY ASKED QUESTIONS

Q. Who are the parties to a trust?

A. A typical trust is the Family Trust in which the husband and wife are the trustees and, with their children, the beneficiaries. Those who establish the trust and transfer their property into it are known as trustors or settlors. The settlor's usually appoint themselves as trustees and they are the primary beneficiaries during their lifetime. After their passing, their children and grandchildren usually become the primary beneficiaries if the trust is to survive, or the beneficiaries receive distributions directly from the trust if it is to close out.

Q. What is a living trust?

A. Sometimes called an Inter-vivos Trust, the living trust is created during the lifetime of the settlors (as opposed to being created by will after death) and usually terminates after they die and the body of the trust is distributed to their beneficiaries.

Q. Can a trust hold title to real property?

A. No; the trustee holds the property on behalf of the trust

Q. Is a trust the best way to hold my property?

A. Only your attorney or accountant can answer the question; some common reasons for holding property in a trust are to minimize or postpone death taxes, to avoid a time consuming probate, and to shield property from attachments by certain unsecured creditors.

Q. Can I homestead property which is held in a trust?

A. Yes, if the property otherwise qualifies.

Q. Can a trustee borrow money against the property?

A. A trustee can take any action permitted by the terms of the trust, and the typical trust agreement does give the trustee the authority to borrow and encumber real property. However, not all lenders will lend on a property held in a trust, so check with your lender first.