

Revocable Living Trust

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The process of settling an estate can be costly, time-consuming and frustrating. A revocable living trust may eliminate some of these inconveniences. Sound promising? Read on.

Living Trust Defined

A living trust is a legal document which allows an individual to transfer ownership of titled and personal property from their name to a trust. Once property is transferred, the trust – not the individual – becomes the legal owner. And, even though the individual no longer “legally” owns the property, he/she can remain in control of all assets in the trust as long as he/she lives and remains competent.

This type of trust is called “living” because it is created during one’s lifetime and “revocable” because it can be changed or rewritten as often as desired. What’s more, it can be revoked entirely for any reason, at any time before death.

Terms for Understanding

Being familiar with the following terms provides a basic understanding of a living trust.

■ **Creator** – the person who establishes the trust. Other terms with the same meaning are grantor, donor, settlor and trustor.



- **Trustee** – the person or institution that agrees to carry out the terms of the trust. A trustee may be a relative, a friend, an attorney, a bank, a trust company or some other institution. The trustee of a living trust may be the creator while he/she is alive.
- **Successor trustee** – the person or institution who steps in to manage assets in a trust when the primary trustee(s) dies or for some other reason becomes unable or unwilling to serve. A successor trustee is sometimes referred to as a “back-up” or “alternate” trustee.
- **Beneficiary** – the persons and/or organizations/institutions which may receive income and/or property of the trust during the lifetime of the creator and after the creator’s death.

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Background

Many believe that the use of a living trust for estate planning purposes is a new concept. In fact, it has been referred to as a “modern” estate planning tool. Historians tell us, however, that these types of trusts have been used for hundreds of years and, in fact, date back to the Middle Ages. Although this bit of information is interesting, what most property owners want to know about a living trust is “How does it work?” and “Is it for me?”

Understanding the mechanics of a living trust is not difficult. Deciding whether or not the living trust is the best way to hold assets is, however, a complex decision.

Proponents/Opponents

Proponents of living trusts see no major drawbacks or risks involved in creating and/or maintaining the trust. In fact, there are those who contend that a living trust should be part of everyone’s estate plan regardless of the value of their assets and family situation. On the other hand, some professionals see these trusts as more “hype” than help. Although opponents do not deny that a revocable living trust is useful in some estate plans, they view them as a waste of time, money and effort for the majority of property owners.

Who is right? Since both points of view are extreme, the truth probably lies somewhere in the middle.

In reality, only the individual who owns the property in question can decide whether or not a living trust will be useful in their overall estate plan. To make this decision, you need to understand what a living trust can and cannot accomplish and how it can be used with other estate planning tools.

Mechanics of a Living Trust

By far, the most popular reason for creating a living trust is to avoid probate. The thing that protects an estate from probate is nothing more than a legal technicality. With a living trust, an individual owns nothing in their own name. The trust is the legal owner of the property. Therefore, probate is not necessary.

The thought of not “legally” owning property is frightening to some. Many fear they will lose control over assets placed in a trust. However, if the “grantor” or “creator” appoints himself/herself as “trustee,” he/she will remain in control of all assets just as before the property was placed in trust.

When the grantor is married, both spouses can act as trustees. As joint trustees, either spouse has legal authority to act as trustee and will have instant control over the property in the trust in the event of the other’s death or disability. Institutions (banks, trust companies, etc.) can also be named a trustee.

A successor trustee is named to manage the trust upon the death or disability of the trustee or if for some other reason the trustee becomes unwilling or unable to serve. No court proceedings or legal action is required for the successor trustee to take control and assert the same powers that the trustee had to buy, sell and transfer trust assets. Institutions can also be named as a successor trustee.

It goes without saying that a trustee and any successor trustee should be someone known and trusted by the grantor. Some professionals recommend naming more than one trustee. It is believed that multiple trustees will monitor each other, making it less likely that one of the trustees will take actions which are not in the best interest of the estate. A trustee functions in a fiduciary capacity and must, by law, act strictly in accordance with the trust instructions.

Trustees, like executors of wills, are entitled to receive a reasonable fee for their services. Family members serving in this capacity generally forego their fee and banks typically collect their fees when they start acting as trustee. Before naming a bank or trust company as trustee, inquire about fees.

Trust Beneficiaries

Beneficiaries are the people and/or organizations designated to receive property and possessions from the trust.

Creating the Trust

An individual can draw up his or her own living trust. This practice, however, is discouraged because of the great chance for error. A poorly drawn trust can be a hindrance rather than a help to survivors.

When creating a living trust, it is recommended that you seek the services of an attorney who is a knowledgeable and experienced estate planner. When selecting a professional, don’t be afraid to ask questions such as:

- How many living trusts do you create in a year?
- How many living trusts do you settle in a year?
- What do you charge to settle an estate?



Funding a Living Trust

After a living trust is established, it must be funded. This means transferring assets to the trust. **A living trust cannot protect property from probate unless the property has been transferred to the trust.**

Here's how the process works. After an attorney draws up the trust agreement, based on the creator's instructions and wishes, the document is reviewed, signed and notarized. At that time, titled property is transferred from the owner's name to the trust's name.

Consider this example: John and Mary Smith own a home jointly. They establish a living trust and decide to transfer the title of their home to the trust. They complete the appropriate deed and have the title transferred from "John and Mary Smith" to "John and Mary Smith, Trustees Under Trust Dated 4-19-2000."

All property with ownership documents should be re-titled in the trust's name. This includes bank accounts, money market accounts, stocks, mutual funds, bonds, safe deposit boxes, etc.

Some financial planners recommend that checking accounts and automobiles be left out of a living trust. One reason is that Arkansas estates with assets valued at \$50,000 or less may be settled by a simplified legal proceeding which avoids probate. In addition, checking accounts in the name of the trust can be somewhat confusing to use.

One of the most frequently asked questions concerning living trusts is "Will it be difficult to sell or refinance property which has been transferred to a living trust?"

The response is "no." To sell or refinance property owned by a trust, one can temporarily transfer the title of the property back to themselves and sell or refinance it in their name.

Or, the property can be sold or refinanced directly from the trust. This method is probably the most convenient; however, some banks and title companies are reluctant to allow real estate owned by a trust to be refinanced.

Some types of property do not have title documents. Examples include household furnishings, jewelry, furs, tools, computer equipment, stereo equipment, antiques, art and clothing. These types of items can be transferred to the trust simply by listing them on a trust schedule.

A Will Is Still Important

It is important to have a will in addition to a living trust so that any assets not in the trust at the time of death will be directed into the trust. This type of document is referred to as a "pour over" will. If you have minor children, a will is necessary to appoint a legal guardian in the event of your death.

Living Trusts – Income and Estate Taxes

A living trust does not save a penny in income or estate taxes. The IRS treats property in a revocable living trust as it would any other property owned by the creator. An individual with a living trust continues to use his/her social security number when filing a tax return and reporting any income received from assets in the trust. Because of this, it is recommended that the creator use his/her own social security number as their trust identification number.

Estates valued at less than \$675,000 (for 2000) are exempt from federal estate tax. The exempt amount gradually increases to \$1,000,000 by 2006. If your estate exceeds these amounts and planning to avoid estate taxes is desirable, consult with an attorney. He or she can suggest estate planning techniques designed to minimize tax liability. Although revocable living trusts are not designed to avoid estate taxes, they may be combined with a second trust for this purpose. Keep in mind, however, that wills may also be combined with a tax-saving trust to minimize tax liability.

Costs of a Living Trust

The initial cost of establishing a living trust depends upon the size and complexity of an estate. Some try to compare the cost of establishing a living trust to that of a will; however, this is like comparing apples to oranges. Wills and living trusts are two different estate planning tools. Dollar-for-dollar comparisons are unrealistic because property passed to heirs through a will is subject to probate.

Therefore, if cost comparisons are made, one must consider not only the cost of the will but the cost of probate. Likewise, when determining the total cost of a living trust, things such as management fees should be included.

Although a factor, costs should not be the determining issue as to whether one uses a will or living trust or both. Family needs and situations and the size of the estate may be of higher priority.

When to Consider a Living Trust

In many cases, a will is sufficient for transferring assets to heirs. There are certain situations, however, in which a living trust can be beneficial. **One may consider establishing a revocable living trust if:**

- They own property in more than one state (a will must be filed and probated in each state in which property is owned).
- They are at the risk of becoming incapacitated.
- They desire to keep the terms of their trust confidential (a will is made public).
- They are concerned that a will might be contested.
- They own property in such a way that probate could be costly and time-consuming.

Summary

A living trust has several attractive features. However, each individual must decide if their estate could benefit from establishing such a document.

This fact sheet is only a brief review of a complex legal document. It is intended only to introduce consumers to a viable estate planning tool and encourage further reading and study on the topic. It is highly recommended that you seek legal advice from an attorney who specializes in estate planning prior to utilizing a living trust to distribute your estate.

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