

ADVISOR THOUGHTS

JULY 2017

DO I REALLY NEED A LIVING TRUST?

Is having just a will the most effective estate planning program? Contrary to what many individuals feel regarding their estate plan documents, a will alone does not offer as many benefits and protections as having a revocable or, as it is sometimes referred to, a “living” trust.

A living trust lets you direct how your property will be handled during your lifetime as well as after your death. In contrast, a will goes into effect at your death and governs only assets left titled in your name alone.

One of the benefits of a living trust is the avoidance of probate. Probate is the process whereby, upon death, your will is filed with a probate court, a legal representative or *executor* is appointed, debts are paid and your assets are distributed according to your wishes. Depending on the nature and complexity of one’s assets, probate of a will can take as much as a year or two to complete and can be expensive. Additionally, probate files are open to public scrutiny allowing individuals and businesses to see what you owned and to whom you left it.

Some individuals, when considering a living trust, wonder about the loss of control over their assets. In fact, as the creator or *grantor* and trustee of your trust, you continue to have total control over your money. You can continue to buy or sell assets, transfer cash, etc., and you can terminate the trust at any time. In the event you become disabled, the trust would provide for a replacement or *successor* trustee who can then act automatically to manage the trust assets for your benefit as opposed to having a probate court appoint a conservator or guardian for the same purpose.

Once your trust has been drafted and signed, an important responsibility remains. To avoid court-supervised conservatorship or guardianship proceedings if you should become incapacitated, and the probate process at your death, your assets must be transferred to (i.e. retitled into the name of) your living trust. This is known as *funding* the trust.

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Deeds to your real estate transferring title from yourself individually to the name of your trust will be prepared and recorded. Bank accounts and investment, brokerage accounts or physical certificates should be transferred as well. These tasks are not expensive, and they are important because the benefits of a living trust (such as disability planning or probate avoidance mentioned above) apply only to the assets that are “in” the trust.

Here are several noted reasons, then, to use a living trust in your estate plan:

- **Security.** A living trust provides uninterrupted management of your assets if you become ill or incapacitated and have named a successor (replacement) trustee – thus eliminating the need for the courts to appoint a conservator or guardian.
- **Privacy.** A living trust avoids the costs and delays of probate – the state sanctioned system that oversees the administration of your will. Avoiding probate means your heirs receive your estate faster. Plus, a living trust is not subject to public scrutiny, so your beneficiaries and the amounts they receive remain confidential.
- **Flexibility.** You have the freedom to amend, add to, or even completely revoke the trust agreement as you wish.
- **Professional investment management.** You can choose to appoint a professional trustee such as a bank trust department or trust institution to manage your trust. This frees you from the worries of the day-to-day management of assets. Yet, if you choose to remain as co-trustee, you may direct investment goals, including instructing your trustee to change investment strategies.
- **Control.** Living trusts allow you to control who will be the trust’s beneficiaries and who will be the trustee. Most likely you will name yourself as trustee during your lifetime and maintain the right to appoint and select successor trustees and beneficiaries. You also control the income and principal and how much of it you wish to use during your lifetime.
- **Tax Savings.** Although the assets in your living trust are subject to estate taxes, the trust may be drafted to make the most of federal estate tax exemptions.

Here are some additional considerations when contemplating setting up a living trust:

- **Expense.** Don’t be put off by the cost of preparing a living trust. The legal fees charged by your drafting attorney depend on the complexity of your particular estate plan and in the big picture these costs are insignificant when compared to the benefits.

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- **Successor Trustee Selection and Administrative Responsibilities.** During your potential incapacity and at your death, because there will be administrative tasks associated with a revocable trust such as accountings, reports and distributing income, it is critical that you name a successor trustee who is experienced in carrying out these important tasks.
- **Asset Distribution.** It is important to remember that the language in the trust only applies to property that is held by (titled in the name of) the trust. Some assets cannot be transferred into a revocable living trust, such as IRAs, qualified retirement plans and assets held jointly. Their disposition depends on the named beneficiary or the joint ownership designations.

In summary, a revocable living trust can provide for the private management of your assets during your lifetime and after your death. If you choose not to act as trustee, or if you become unable to do so, your named trustee can assume responsibility for your assets immediately and manage them for your benefit without direct court intervention or supervision. At your death your trustee acts much as an executor of your will would by gathering your assets, paying your remaining debts and taxes and distributing your property as you have directed in your living trust.

Administering trusts based in 37 states and 7 foreign countries, Ledyard Financial Advisors, as a corporate trustee, provides the appropriate objectivity, continuity and technical expertise needed to administer trusts of all types.



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