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Living Trusts Offer Many Benefits

Anyone who thinks about planning his or her estate will hear about “wills,” “probate” and “living trusts.” A will is a document that states where you want your property to go when you die. Probate is the court procedure that makes sure your will is valid and puts it into effect. But what is a “living trust” and what estate planning benefits does it provide?

Trust are legal devices that let one person manage property for the benefit of someone else. With a trust, a person can stop being the “owner” of property but still keep control over it. A trust is created when someone (called a “trustor” or "grantor") places property in a trust. A "trustee" holds and manages the property for the benefit of someone else, who may later receive the property or the income or benefits it generates. The person who receives these benefits is called the “beneficiary.”

A living trust is a special kind of trust which can be an extremely valuable estate planning tool. With a living trust, you can transfer property from yourself (as the full owner) to the name of the living trust (for example, Mary Jones Trust). You can name yourself as “trustee,” or you can appoint someone else to serve in this capacity. You can set up the trust so that you receive the benefits of ownership while you are alive. When you die, a “successor” trustee (someone you selected) takes control of the assets in the trust and distributes them in accordance with your instructions in the trust document. This takes place without the involvement of the probate court.

Living trusts can be "revocable" or "irrevocable," depending on whether you keep the power to change or revoke it. The classification is important because only an irrevocable trust saves taxes. Property in a revocable trust is treated for tax purposes as still belonging to the you.

A trust can also be set up in your will. This is called a testamentary trust (as opposed to a living trust, which is set up while you are alive).

Key Ways A Living Trust Can Help You

Living trusts are extremely helpful estate planning tools, as they can help you in many ways. They include:

• Avoid delays and expenses of probate. With a living trust, property can often be transferred after death much faster than by will, since property left by a will must go through the probate process. Also, the steps taken under a living trust can be less expensive than administering a will. So a living trust can avoid the delays of probate (the process can take months or even years -- how long is out of your control) as well as help you leave more to your heirs.

• If you become incapacitated, a living trust can help you avoid a guardianship (called "conservatorship" in some states). A guardianship happens when a person is declared legally incompetent and a court appoints someone (a "guardian") to manage that person's money and make other decisions for him or her. By having a living trust, you eliminate the need for guardianship proceedings if you become incapacitated, since you've already appointed someone to manage your money in this situation.

• Living trusts are harder to challenge than wills. In a probate, your heirs receive notices asking if they want to challenge each action being taken. Living trusts do not involve court filings or notices. Also, more goes into creating a living trust, so it is harder for someone to claim you did not have the mental competency to prepare it or that you prepared it because of someone's threats or pressure.

• Your living trust can provide financial support for others, like children or grandchildren, without giving them control of property.

• Privacy. Living trusts offer a lot more privacy than wills because wills must be proved and administered through courts, and court records are open to the public. The contents of a living trust don't have to be made public, so they are easier to keep confidential.

• Lower estate taxes. Depending on the value of your estate, a living trust can be used to help lower the estate taxes due on your death.

• A living trust can help you with issues regarding young children. If you die while your children are minors, a court will appoint a guardian to manage money they inherit until they reach adulthood. The guardian must get court approval for many decisions. But a trust lets you name who you want to manage the money, how to spend and save it, and when to turn it over to the children.

• While you're alive, you can be the trustee to manage the property you put in trust.

Creating A Trust

A living trust is created by a written trust document. The document will name a person or entity to serve as the trustee (normally you), a successor trustee to take over when the first trustee dies or becomes incapacitated, and it will also name the beneficiaries. In addition, the trust document will tell how to manage and distribute the property in the trust.

Along with creating a trust document, property that will be put in the trust must be transferred to it. You can place almost any type of property in it, including money, real estate and stocks.

There are many reasons to have a living trust, and people who are planning their estate should look into whether they would benefit by having a living trust. Our law firm can analyze your family and financial situation and advise you if a living trust is right for you as well as help you prepare a living trust that is tailored specifically to your needs.

The information contained in this article and throughout this Information Center is of a general nature. Due to constant changes in the law, exceptions to general rules of law, and variations of state laws, seek professional legal assistance before acting on any matter.