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Living Trusts Bring Ease of Mind

Maintaining control of your assets for both yourself and your heirs is a vital concern. Traditionally, wills and trusts dictate how that will happen, each having distinct advantages and disadvantages. Choosing between them correctly, or using both together effectively, can save you and your heirs a tremendous amount of time and pain. For those with larger estates, estranged families or more complicated financial holdings, a living trust is often the best way to go.

A living trust is a legal entity you create to provide a plan for your assets during your lifetime and once you pass on. It is, by definition, a revocable trust, meaning you can change the terms at any time. In essence, with a living trust, you go from owning the assets to controlling a separate legal entity that owns the assets.

“The primary reason you’d create such a trust during your lifetime is that it’s an easy and efficient way to bring on new trustees if you become incapacitated,” says estate attorney Peter Miller of Boston’s Mintz, Levin, Cohn, Ferris, Glovsky and Popeo.

A living trust is also an excellent vehicle for asset growth. It can provide estate planning shortcuts as well as the flexibility to easily change an estate plan when needed during your lifetime—perhaps to deal with a wayward heir, a divorce or the arrival of grandchildren. But a trust falls short when it comes to protecting your assets or removing assets from an estate to minimize the estate tax burden. “For income, estate and gift tax

purposes, it’s not going to have any effect,” says Miller. “The decision to fund a revocable trust isn’t based on that.”

BUILDING YOUR LEGACY

You would establish the trust with the help of an attorney, who drafts its provisions based on your wishes. Whom do you wish to control the assets? Do you want a co-trustee or power of attorney granted to someone else to let them also make decisions about handling the property in the trust? Whom do you want to succeed you as trustee when you are no longer capable of making decisions? And finally, what do you want done with the assets in the trust when you pass on? You then have the task of transferring ownership of whichever assets you choose over to the trust. In some cases, this is as easy as changing the names on deeds, titles and accounts. In other instances, such as transferring an illiquid limited partnership, it is a lot more complicated, and a lawyer might need to assist the process.

Since they are revocable by the grantor at any time, there are usually no real tax benefits to living trusts. Likewise, there is no tax downside. Neither the grantor nor the trust owe taxes on the assets transferred.

So why bother? The benefits of a living trust, says estate attorney Richard W. Moore of Meaders, Duckworth & Moore, are getting all your disparate assets put under one legal entity, having a clear path for whoever controls that legal entity and developing detailed instructions regarding what that person is supposed to do with assets inside it.

Living Trusts Bring Ease of Mind

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While living trusts are used in conjunction with wills, having all assets in the trust can make the settling of your estate fairly painless. A will alone means your estate could get settled in probate court. Next of kin must be notified, a difficulty for some families who are not close either emotionally or geographically. In probate court, a will is easily challenged by heirs and other claimants, and, depending on the complications involved, can take months or longer to settle. Property owned in other states can add another layer of complications to a will, since your heirs will often have to navigate the probate court in that state as well.

Further, probate court means your assets, and their value, are an open book. Anyone digging through the court records can see how much money you have and how much of it you are leaving to whom. Living Trusts are private. The assets are dispersed by the trustee you previously appointed according to a prescribed plan you put together, without much opportunity for claimants to make a legal challenge.

TRANSFERRING WEALTH: LIVING TRUST VS. A WILL

FEATURES	LIVING TRUST	WILL
Avoids probate	Yes	No
Easy to Amend	Yes	Requires more formalities
Provides for management of assets upon disability	Yes	No

FEATURES (con't)	LIVING TRUST	WILL
Reduces challenges to your estate plan	Yes	No
Avoids ancillary administration of out-of-state assets	Yes	No

ADVANTAGES OF LIVING TRUSTS

In addition to avoiding probate, living trusts offer the following benefits:

- **A hedge against disability.** The trust, used in tandem with a durable power of attorney (a power of attorney that survives disability), enables your estate plan to be carried out even if you are disabled or incapacitated and unable to make decisions. This avoids the dilemma of having to revise a will when a person's competence is questionable.
- **Provide continuity of successor/co-trustees.** The grantor can serve as trustee and retain the power to replace or appoint new trustees as he or she sees fit.

THE DOWNSIDES

The disadvantages of a living trust depend on the situation and nature of assets. Here are common issues that crop up:

- **Value of living trust vs. avoiding probate.** The legal fees and costs associated with creating, funding and maintaining a living trust may outweigh the relatively inexpensive but lengthier,

more complicated route of an estate going through probate court. For simple estates of little value, the costs of establishing a living trust might not be worth it.

- **Retitling of assets.** As a matter of state law, title to assets (e.g., deeds, bank/brokerage accounts) must be changed to reflect their ownership by the trust and not by a client individually. Failure to follow the formalities creates troubles down the road.

If a living trust seems like a good option, the next step is to retain an attorney to create the trust and give advice on asset transfers. One important caveat should be kept in mind: These trusts generally offer little or no asset protection because all assets remain under the grantor's control. There are other ways to accomplish those goals, and it is best to get expert advice. Legal formalities and a well-thought-out overall estate plan are key when it comes to effective living trusts. ■

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