

Can You Afford Not To Have A Living Trust?

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Ever since the *Wall Street Journal* recently reported about the increasing use of "living trusts," there has been considerable discussion among financial planners on this attractive and safe estate planning device. This article will explain how a living trust works and what advantages you may realize in creating a living trust of your own.

One of the main purposes of creating a living trust is to legally protect you and your loved ones from the lengthy red tape of probate court proceedings. For example, probate costs and estate taxes in a typical estate of \$1.2 million can amount to \$280,000—money that would otherwise be in the hands of your heirs. In addition, probate administration requires that personal information concerning your wealth and business operations be made public. In contrast, living trusts protect family members from expensive and emotionally draining estate settlement proceedings, without undue delay, with tremendous savings, and with total privacy.

What is a living trust? Living trusts are *present* transfers of property—whether real property or personal property, livestock, interests in a business, or other property rights—into trust. If you are the person who creates the trust you are called a "settlor" or "trustor." You can watch the trust in operation, determine whether it fully satisfies your expectations and, if it does not, revoke or amend the trust. Living trusts also permit you to delegate administration of the trust to professional trustees, which is desirable for people who wish to divest themselves of managerial responsibilities. The person or persons who ultimately benefit from the trust are known as "beneficiaries." Legal title of property is actually transferred into the trust.

There is great flexibility available with living trusts with regard to future estate planning, and significant opportunities to save on federal estate, gift, and income taxes. And because of the simplicity of living trusts, there is no need to feel intimidated by the procedure. Examples of the most frequently used types of living trusts are discussed below:

1. A "joint trust" with regards to one's personal home, home furnishings, or ranch. With a married couple, these assets are transferred into trust, and each party will have the lifetime use and enjoyment of the property, with the right to sell or encumber the property. Upon the death of both parties, the property will pass to the stated beneficiaries without probate, and without delays.

2. Trusts for *divorced parents* who have remarried are very important to preserve the status of one's separate property upon remarriage and to provide for children from the previous marriage. Such a trust prevents the commingling of the trustor's separate property from property acquired in the new marriage, and eliminates the possibility of a Will contest later.

3. A trust can be used to *support elderly parents*. Income from property placed into trust may be applied for parental support for life, and as trustor you can escape income tax liability for income produced from the trust.

4. Trusts can be an *alternative to outright gifts* to children. Distribution of money or property to children can be timed in accordance with the trust instrument, and provision can be made for periodic distributions of lump sums or specific property.

5. *Insurance trusts* can be used to provide greater flexibility in distributing life insurance proceeds and to reduce estate taxes. Income from life insurance, for example, can be payable to your surviving spouse during his or her life, with the principal payable to children thereafter.

6. A *charitable trust* is recommended for people who want to make charitable gifts but also retain control of their property during their lifetime. Property is transferred into trust for the future benefit of a charity, and a lifetime interest is retained for your family or another beneficiary. You receive a current income tax deduction for the value of property contributed to the trust, less the value of income retained.

7. A trust can be used to *gradually transfer an entire business* (whether sole proprietorship, partnership or corporation) to your chosen heirs over a designated number of years, so that you can test the waters to see if your successors in fact will operate in the fashion you would want.

There are many other types of trusts, and virtually any type of property can be transferred into a trust. It is also vitally important to still have a Will as a "back-up" to the trust or trusts in case anything goes wrong, or in the event your estate is entitled to collect an award for damages occasioned by a wrongful death claim. Only a small proportion of lawyers have a working familiarity with living trusts and other estate planning programs, and it is always important to seek out legal advice to determine whether a living trust or other type of trust is a suitable vehicle for your particular intentions. For additional information or assistance, readers may feel free to contact the author, and there is no charge for an initial consultation.

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