

FREQUENTLY ASKED QUESTIONS

ABOUT LIVING TRUSTS & ESTATE PLANNING

IMPORTANT FACTS TO KNOW

1. WHAT IS A REVOCABLE LIVING TRUST?

A Trust is a contract where one person transfers property to another person for the benefit of a third party. For example, “X” transfers property to “Y” to manage for the benefit of “Z.” If the creator of this arrangement sets it up during his or her lifetime, it is called a “LIVING TRUST.” If the creator retains the right to dissolve this Trust, it is a “REVOCABLE LIVING TRUST.”

A Living Trust will AVOID PROBATE. This is the primary advantage of a Living Trust; this represents great savings, both financially and time-wise.

A Living Trust AVOIDS PUBLICITY. Estates and documents which pass through probate such as a Will become public record. Anybody who wants to can have access to it. Property in the Trust avoids publicity and achieves privacy both as to its contents and who receives it.

2. WHAT CAN A LIVING TRUST DO FOR ME?

A Living Trust can provide for the private management of your assets if you choose not to act as trustee, or when you are unable to do so, by the person or persons whom you appoint as trustee. When you are incapacitated, your trustee can assume responsibility for your assets, and manage them for your benefit without direct court intervention or supervision. At your death, the trustee acts much as an executor would, gathering your assets, paying valid debts, claims and taxes, and distributing your assets as you have directed in your Living Trust.

3. DOES A BANK OR TRUST COMPANY HAVE TO BE INVOLVED?

No, the law doesn't require a corporate trustee even though your own ideas may suggest that this is a good idea.

4. IF I SET UP A TRUST, IS A WILL ALSO REQUIRED?

Yes, a “Pour-Over” Will is drafted along with the trust; it acts as a safety net. The only beneficiary named in the Will is the Living Trust. So, if you forget to transfer any of your assets into the Trust, then the Will would pick up those assets at the time of your death and transfer or “pour-over” those assets into the Trust.

5. SHOULD PERSONAL PROPERTY BE TRANSFERRED INTO THE TRUST?

Household items of nominal value need not be put into the Trust.

6. MUST I TRANSFER ALL OF MY ASSETS INTO THE TRUST?

No, but to avoid probate you want to transfer all of your substantial, titled assets into the trust. Only those assets in the Trust avoid probate. Assets normally not transferred into the Trust are: Personal Checking Accounts, Annuities, Life Insurance Policies, Retirement Accounts, Automobiles and Home Furnishings.

7. SHOULD A SINGLE PERSON HAVE A LIVING TRUST?

Yes, Living Trusts are just as effective for a single person as they are for married persons, if not more so. It does not matter whether or not someone is unmarried or widowed. In fact, for a single person who owns property in their own name, a Living Trust is the best way to avoid probate.

8. DOES A TRUST MAKE SENSE FOR AN ESTATE OF LESS THAN \$1,000,000.00?

Yes, because that individual can still avoid the time and expenses of probate. Statutory probate attorney's fees are as follows: 4% of the first \$100,000; 3% of the next \$100,000; 2% of the next \$800,000; 1% of the next \$9 million; 1/2% of the next \$15 million. The purpose of a Trust is to avoid probate. The value of an estate has more to do with Estate Taxation, not necessarily probate avoidance.

9. DOES THE LIVING TRUST PREVENT YOU FROM BORROWING ON ASSETS IN THE TRUST?

No, although lenders may want to see a copy of the Trust, the Trust does not restrict your rights to borrow on assets in the Trust in any way.

10. DOES THE LIVING TRUST PROTECT ME AGAINST MY CREDITORS?

No, the Trust does not act as a shield to protect you from creditors.

11. WHY DOESN'T EVERYONE HAVE A LIVING TRUST?

Most people do not know about Living Trusts or how they work. Also, most people do not plan for the future and will not discuss what happens at death.

12. MUST SPECIAL INCOME TAX RETURNS BE FILED?

No special tax forms are required as long as each spouse, or one alone, is receiving all the income from the Trust. Usually, the social security number of the Trustor is used as the tax identification number for the trust and no new forms are filed.

13. WHY IS IT IMPORTANT TO TRANSFER ASSETS INTO THE TRUST?

Once again, the primary reason is to avoid probate. Only those assets titled in the name of the Trust avoid probate; it will save time and money. Also, it will maintain privacy. The correct way to transfer your assets into the Trust is by changing title from you as an individual to you, as Trustee of your Trust. It isn't enough to just list assets on a schedule attached to the Trust. You must actually retitle your assets in the name of the trust. This is called "funding the trust."

14. WHAT RIGHTS DOES THE SURVIVING SPOUSE HAVE IN THE TRUST ASSETS?

If the surviving spouse is the Trustee, he or she may have the right to sell, buy or transfer any of the assets. The surviving spouse is usually the beneficiary of the Trust assets and because of this, has the right to all the income, and to invade the principal. The surviving spouse has the freedom to do whatever he or she sees fit with the assets in the Trust in most instances.

15. DOES MY WILL AVOID PROBATE?

No, a Will does not avoid probate. A Will is actually made for probate. All the assets passing through the Will pass through probate. Probate is a process of clearing title through the court changing the name on an asset, from a deceased person to that of a living beneficiary. Once again, probate is expensive, time consuming and open to the public. Most people want to avoid it. You can avoid probate with a Revocable Living Trust. Remember, proper planning saves dollars.

16. WHO ARE THE PARTIES TO THE TRUST?

- (a) The Creator of the Trust, most times referred to as the Trustor, Settlor, or Grantor;
- (b) The Manager of the Trust, called the Trustee;
- (c) The Beneficiary is the person for whose benefit the Trust was established.

17. WHAT OTHER ESTATE PLANNING DOCUMENTS SHOULD I HAVE?

A Durable Power of Attorney for asset/property management deals with assets which have not been transferred to your living trust prior to your incapacity or which you may receive after your incapacity. With this document, you appoint another individual (known as the "agent" or "attorney-in-fact") to make property and asset management decisions on your behalf. This does not, however, replace the Living Trust because it cannot dispose of your assets in accordance with your wishes at your death. A power of attorney becomes void at death.

A Durable Power or Attorney for health care (also known as an Advance Directive for Health Care) allows your attorney-in-fact to make health care decisions for you when you can no longer do so yourself. It also contains statements of wishes concerning matters such as life sustaining treatment and other health care issues.