

# What You Should Know About Estate Planning With a Living Trust

## **INTRODUCTION**

In recent years, living trusts have grown increasingly popular as substitutes for wills in estate planning. They are sometimes called revocable trusts or inter-vivos trusts. Living trusts can have several advantages over wills, including avoiding probate, avoiding guardianship, maintaining liquidity, and keeping privacy. You can create a living trust with a simple trust document and change it at any time. You can transfer all of your assets to the trust but continue to use and manage them during your lifetime. After you die, your trustee will transfer ownership of the assets to the beneficiaries named in the trust.

An important benefit of living trusts is the speed with which your property can be transferred to your heirs after your death. In addition, a living trust is private. Only you, your trustee, and your beneficiaries will know the value of the trust property, how it is to be distributed, and the names of your beneficiaries. This pamphlet reviews the basics of how to create and use a living trust. Your lawyer can help you decide whether a living trust is appropriate in your circumstances and prepare a trust document that meets your goals.

## **USING A LIVING TRUST**

Most people understand the importance of a will, but many are not familiar with trusts. Both a will and a trust can be used to transfer your property when you die, but the similarity ends there. A will has no effect until you die, while a living trust becomes operative during your lifetime to manage your assets. While a will is part of the public record a trust is not, thus providing greater privacy. Trusts are usually easier to amend than wills and less likely to be contested by your heirs.

You can use a living trust to make decisions about your old age care. The trust can specify your preference for care by your family or in a nursing home. If you become disabled or incompetent, your trust will control who will care for you and how your money will be managed. Without a living trust, a court might need to appoint a guardian if you become incapacitated. As with probate, guardianship proceedings can be costly and time consuming. A living trust provides a way to avoid legal proceedings to appoint a guardian. A living trust may also help you in a variety of other circumstances. For example, you can use a management feature of living trusts to appoint a professional trustee for the elderly, for the inexperienced persons who have recently inherited wealth, and for minors. Living trusts are also useful for those lacking time to manage their property, such as entertainers, entrepreneurs, and busy professionals. If you own real estate in more than one state a living trust can help avoid probate in each state. Probate in multiple states increases the cost and time to distribute your property to your heirs.

## **CREATING A LIVING TRUST**

Your lawyer can prepare a living trust agreement that appoints a trustee to manage your property for your beneficiaries. To maintain control, you can be your own trustee. Commonly, the person creating the living trust is the first beneficiary while other provisions transfer the property to their heirs upon death. The trust agreement will provide details on your rights to change the trust, the duties of the trustee, how to distribute your property, how to provide for your family, and when and how to select a successor trustee.

You can cancel or change any of the provisions of your trust document, including the beneficiaries, the property they are to receive, and the trustee. You should review your trust every year to assure that it still meets your needs. Your lawyer can advise you about the legal and tax effects of your proposed changes and prepare a document that will accomplish those changes.

## **CHOOSING A TRUSTEE**

As noted above, you can serve as your own trustee or you can appoint a professional trustee such as a bank or trust company. Most people appoint an individual such as their spouse, a relative, a friend, their lawyer, or other advisor to serve as successor trustee. When deciding whom to select as trustees, you should consider whether they are worthy of your trust and are willing to accept the job.

A professional trustee may be the best choice if your property will be difficult to manage or distribute. The disadvantages of professional trustees are that they are impersonal and charge annual fees ranging up to two percent of the value of the trust assets. Furthermore, many professional trustees are unwilling to serve if the value of the trust assets is less than \$100,000.

The trust document will describe the duties of the trustee to manage the trust property, keep records, prepare tax returns, and make distributions to beneficiaries. The trust document can also designate a

successor trustee or provide instructions on how to select the successor.

### **TRANSFERRING PROPERTY TO YOUR TRUST**

After creating your trust, you must complete the formality of transferring your property to the trust. For example, instruct your broker to transfer your stocks and bonds into the name of the trust. Tell your insurance agent to assign your life insurance policies to the trust. Deeds transferring your real estate should be prepared and recorded in every county where you own real estate.

### **AVOIDING PROBATE**

Although your living trust can help you to avoid probate for some of your property, you may still need a will. It may be inconvenient to transfer certain property, such as your car or personal checking account to a trust. Such a transfer could make it difficult to insure your car; it might be harder to obtain credit if your checking account is not kept in your name. A will may still be needed even if you transfer all of your property to a trust. A will is needed to appoint a guardian for your minor children. A will is also needed for assets that you acquire after the creation of the trust or may have neglected to transfer to your trust, such as furniture, clothing and jewelry. The will can have a "pour-over" provision to transfer your property to the trust when you die. Such a "pour-over" provision will cause your property to be distributed according to the terms of your trust.

### **STATE LAW**

You can use a living trust to choose the state for administering your estate. The state for your trust can be different from the state where you reside. This can enable you to select a state that has laws that are most favorable to you for income tax and inheritance tax purposes.

### **TAX PLANNING**

For tax purposes, the trust property is treated as if you remained the owner. You will report income from the trust on your federal income tax return until your death. However, the creation and funding of a living trust does not have any federal gift tax consequences. A trust can be used to avoid estate taxes. Your lawyer can help you to design a trust that provides the most favorable tax treatment for you and your heirs.

### **CONCLUSION**

Living trusts have many advantages in estate planning. Unlike wills, living trusts do not require lengthy and costly probate proceedings. Your property and heirs will not be listed in public records in a courthouse. And your property can be transferred to your heirs almost immediately after your death. The advantage of the living trust must be weighed against the expense and effort of creating and administering the trust. Ask your lawyer whether a living trust is the right estate planning tool for you. Your lawyer can carefully draft a trust document to meet your needs and objectives and help you to reduce taxes for yourself and your heirs. Your lawyer can also help you prepare other estate planning documents, such as a will, a durable power of attorney, and a health care power of attorney.

### **LIVING TRUST CHECKLIST**

1. **BENEFITS OF LIVING TRUST**
  - A. Avoiding probate
  - B. Preserving privacy
  - C. Professionally managing your property
  - D. Handling out-of-state real estate
  - E. Avoiding guardianship when incapacitated
  - F. Avoiding will contests and family disputes
  - G. Designating trustees and their successors
2. **NAMING YOUR BENEFICIARIES**
  - A. Yourself
  - B. Your spouse
  - C. Family
5. **CHOOSING A TRUSTEE**
  - A. Knowledge of your goals
  - B. Experience as a trustee
  - C. Trustworthiness
  - D. Understanding of beneficiary needs
  - E. Investment expertise
  - F. Affordability of fees
6. **CHANGING YOUR TRUST**
  - A. Divorce or remarriage
  - B. Death of beneficiary or trustee
  - C. Acquiring or disposing of property
  - D. Change in value of property
  - E. Changes in status or circumstances of your beneficiaries
  - F. Increase (or decrease) in your net worth
7. **OTHER ESTATE PLANNING DOCUMENTS**
  - A. Will

- D. Friends
- E. Charitable organizations

- B. Living will
- C. Durable power of attorney
- D. Health care power of attorney
- E. Marital trust
- F. Minor trust

3. **KEEPING TRUST RECORDS**

- A. List of trust property
- B. Record of income and expense
- C. Tax returns

4. **KEEPING TRUST RECORDS**

- A. Real estate
- B. Bank accounts
- C. Stocks and bonds
- D. Life insurance
- E. Furniture, jewelry, etc.

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.