

DO YOU NEED A LIVING TRUST?

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In recent years, living trusts have become popular as an estate planning device. Although it is being more commonly used, the benefits of living trusts are not fully understood. Most people are aware that a will is a legal document that becomes effective at death. In contrast, a living trust takes effect during a person's lifetime and allows the person creating the living trust to be the initial beneficiary and also manage the trust assets. Additionally, upon a person's death, the living trust takes the place of a will and describes to whom and in what manner assets should be distributed. Thus while a person is alive, no control is lost over the assets transferred into the living trust. Another benefit of a living trust is that in the event that the person creating the trust becomes incapacitated, then the trust document allows the person to specify a successor trustee to manage the trust.

Upon the death of someone with a living trust, the administration of an estate can be easier for family members. In situations whereby an individual does not have a living trust, probate proceedings are required for all assets except those held in joint ownership or those with a specific beneficiary designation. If a living trust is utilized and it is properly funded, probate proceedings can be avoided. By avoiding such proceedings, administration expenses are reduced, privacy over the estate is preserved and ancillary probate on real estate owned outside of New Jersey is avoided.

Despite the identified advantages of a living trust, its use must be carefully considered and understood. New Jersey is considered a "probate friendly" state thereby minimizing the incentive to avoid probate. Local Surrogate offices are very helpful in walking a person through the probate process thus decreasing administrative burdens. Another factor to understand is that the establishment of a living trust will not provide estate tax savings, nursing home protection or creditor protection. In fact, assets in a living trust are still considered part of your estate, and as such, are available to pay for long term care. Furthermore, any assets gifted from a trust will trigger a 60 month look-back period, rather than 36 months, which may make it more difficult to qualify for Medicaid. When establishing a revocable living trust, a "pour over" will should also be prepared. This type of will protects any assets which are intentionally or unintentionally omitted from the trust. You should consult with an estate planning attorney to determine if your goals can be achieved through the establishment of a living trust.