

THE TRUTH ABOUT LIVING TRUSTS

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In recent years living trusts have gained popularity as a valuable estate planning device. In fact, more and more clients come into the firm and ask about living trusts. It has been our experience that most people do not fully understand the benefits of living trusts. Hopefully, after reading this article you will have a better understanding of the benefits of having a living trust.

Most people are aware that a Will is a legal document that takes effect at death. A Will is considered a testamentary document because it has no legal significance, prior to death. A living trust is considered an intervivos trust because it is established while a person is alive. To obtain the benefits of a living trust, assets must be re-titled into the name of the trust, prior to death. At death, a living trust takes the place of a Will and describes to whom and in what manner assets should be distributed. While alive, no control is lost over the assets transferred into the living trust. The person creating the trust can be the trustee (the person who manages the trust) and the beneficiary of the living trust. Except for assets being re-titled into the name of a trust nothing has changed.

The major benefit of a living trust occurs at death. If a living trust is involved, then the administration of an estate will be easier for family members. All assets re-titled into the trust will pass to the named beneficiaries without being subject to probate. Without a living trust, probate proceedings are required for all assets other than those held in joint ownership with another person. New Jersey is considered a probate friendly state. It is not required that an attorney probate the estate. However, probate could still take several months and expenses could be incurred for attorney's fees, court cost and publication of creditor notices. In the event of family disputes, the cost may sky rocket. If a living trust is utilized and it is properly funded, probate proceedings will either be avoided entirely, or will be reduced to an inexpensive formality. Furthermore, the fee taken by the trustee is much lower than the commission of the executor of a Will. Under New Jersey Law, the maximum trustee fee is one percent (1%) of the amount in the trust as compared to an executor commission which starts at five percent (5%) of the probated estate.

Another situation to consider the use of a living trust is if real estate is owned in more than one state. Probate proceedings are usually required in each state where real estate is owned. The fees involved to probate an estate can vary from state to state. Probate proceedings in states other than New Jersey can be costly if a living trust is not created. Some of the more expensive and time consuming states to probate assets are Florida, Arizona, North Carolina, South Carolina and California. If the property is titled in the name of the trust, then it will have to pass through probate.

A living trust can also be beneficial if a person becomes incapacitated mentally or physically. A Will provides no benefits during a person's lifetime. A problem of incompetency or incapacity may be dealt with through a durable power of attorney, court appointment or a living trust. The successor trustee, selected in advance, has automatic and legal authority to manage the assets of the trust when the original trustee (usually the person establishing the trust) becomes mentally or physically incapacitated. Therefore, when a living trust is used the creator of the trust knows that the trust assets will be managed by a person he or she has selected, instead of someone appointed by a court. Also, family members will not have to worry about asking a court to appoint them as guardian.

Absent from our discussion up to this point, has been any mention of estate tax savings from establishing a living trust. The reason for our failure to discuss this point, is that there is no estate tax savings from a living trust. If you are interested in saving estate taxes, then there are various strategies available. However, to take advantage of these techniques, it is not required that a living trust be prepared.

In summary, if a trust is needed to accomplish your estate planning objectives, there is no reason why it should not be a living trust. When a living trust is used, your family is not subjected to the costs, delays and publicity of probate proceedings. These benefits can be accomplished without losing any control or management over assets. One of the major drawbacks to establishing a living trust is the need to re-title your assets into the name of the trust. Fortunately, for our clients, our firm automatically does this for you. If you are interested in meeting with an attorney to learn more about living trusts, please do not hesitate to contact our office.