

A LIVING TRUST - OR A WILL?

Can you get by with a will only, or do you need more?

You see the ads all the time: "Should you have a living trust?" There is no pat answer. The fact is, the more complex your estate, the more you need for estate planning - and a living trust can be a fundamental tool in that planning. While not everyone needs a living trust, they certainly become more attractive as your estate grows more complex.

Why a living trust? Essentially, a revocable living trust supercedes a basic will. It contains all the instructions on where you want your money to go, and it offers you (the trustee) four additional benefits.

First of all, you can avoid probate with a correctly funded trust. A will actually invites probate - it takes probate to prove its validity. Probate costs you money and time: in some states, the probate process can drag on for years. A will can be made public, and it can be challenged; a living trust cannot.

Second, a living trust can tell your loved ones what to do if you are severely disabled, gravely ill, or incapacitated. While a durable power of attorney gives someone the power to act legally on your behalf, not all financial institutions will recognize it, especially if it was created some time ago. They will recognize a valid living trust. Additionally, with a living trust, your spouse (or other alternate trustee) can manage your affairs as soon as you are unable to, without the courts interfering.

Third, you can potentially realize a great estate tax benefit. Normally, when spouses pass away, their heirs must pay estate taxes. A living trust can be structured to split into two trusts upon the death of one spouse (what is commonly known as an AB trust). This preserves the estate tax credit of the spouse who died and the unlimited marital deduction for the remainder of the estate.

Fourth, a living trust lets you transfer assets to your heirs with conditions attached, if you so desire. Even after you're gone, you can control the way your assets are distributed.

Why not a living trust? Okay, so with all these advantages, why doesn't everyone have a living trust? The fact is, some people have relatively simple estates, and not everyone needs a living trust - at least not right away.

If you are in your 40s or 50s, you will probably live for quite a while yet. If you set up a living trust today at age 45, it may be 40 or 50 years before any of your instructions are enacted - and your instructions can certainly change over that time. (They don't call them *revocable* living trusts for nothing.) A well-written will and durable power of attorney may suffice until you hit your 60s, because you're not likely to die earlier anyway. If you are married, the assets you and your spouse hold in joint tenancy or as community property will pass from one spouse to another with no probate at all.

Also, some people who set up living trusts never fund them. That is, they have the trust drawn up, but they never transfer assets from their name into the name of the trustee of the trust. They don't do the paperwork (or it isn't done properly), or they have the trust created but treat it like an "option" they can use in the future. They die without putting their investment accounts, real estate, etc. into the trust, thereby exposing those assets to probate and defeating the whole point of the trust.

Why not a will and a trust? Actually, it is wise to create both. In all probability, you will not put all of your assets into a living trust. There will be some assets outside the trust, and your will can state where those assets go when you die.

Have you ever heard of a pour over will? At death, a pour over will transfers any remaining assets outside the trust into the trust, so that they can be distributed according to the terms of the trust. So wills and trusts can work hand-in-hand.

What's right for you? You may be wondering whether a living trust is appropriate. You may have one, but sense it needs revisiting. You may have been told you need yet greater degrees of estate planning. This means you should talk to a qualified estate planner today. If you've got a question, I can be your resource for answers. Contact me, so that we may begin our search for those answers together.

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