



WHAT YOU NEED TO KNOW ABOUT LIVING TRUSTS

Many of us have heard the advertisements:

- Living trusts protect your assets from probate
- Living trusts avoid estate taxes
- Living trusts permit quick distribution of wealth
- Living trusts prevent will contests

It often sounds too good to pass up. But, you need to understand the facts. A living trust can be part of your estate planning – if it is right for you and if you do it correctly. On the other hand, many consumers have lost thousands of dollars by buying living trust kits that turned out to be virtually worthless. Learn the basics and protect yourself.

WHAT IS A LIVING TRUST?

A living trust is a trust created during the grantor's lifetime and takes effect during that lifetime (hence its name). A living trust holds your assets under the control of a trustee who will follow your directions regarding the use of those assets during your lifetime and finally upon your death.

LIVING TRUSTS AND PROBATE

One of the advantages mentioned most often by people selling living trusts is that they help your heirs avoid probate. To evaluate that advantage, you first need to understand what probate is.

Probate is the court proceeding that occurs after someone has died. The probate court wraps up the deceased person's

financial and legal matters. Probate courts charge fees based on a percentage of the estate. The fees vary from state to state. State law varies: some states have an unsupervised probate process that only determines the validity of the will, others have a supervised process that pays debts, and tallies up and distributes assets as the will directs. Depending on the schedule of the courts, the probate process can generally take anywhere from six months to two years.

Assets passed through a living trust do not have to go through probate like assets passed through a will. However, probate is not necessarily as expensive or time consuming as some sellers of living trusts indicate. Furthermore, there are other types of estate planning tools that also permit assets to go to heirs without probate, such as joint tenancy, life insurance policies, IRAs, and pension funds, to name a few. There is no one answer for everyone about which types of estate tools will be best for them and their heirs.

LIVING TRUSTS' BENEFITS

There are a handful of other benefits that are commonly cited as the reasons to create a living trust. Here is a short description of a few of the most common:

LIVING TRUSTS AVOID ESTATE TAXES: Living trusts can be a valuable tool to minimize estate taxes. There are other methods, however, that can be equally effective. Living trusts do not avoid income taxes.

LIVING TRUSTS ARE PRIVATE DOCUMENTS: Living trusts will not become public records. A will becomes a public document during probate. However, when you create a living trust, you will often also need to create a pour-over

will, which determines the distribution of any property you acquired after the living trust was created. This document will become a public record during probate.

WILLS CAN BE CONTESTED: It is not easy to contest either a will or a living trust, but both can be contested.

LIVING TRUSTS SAVE MONEY: Because living trusts do not go through probate, your estate will save on probate fees. However, in order to set up a living trust, you must pay an attorney or buy some forms, just as you would with a will. Generally, a living trust costs more to write than a will.

CAUTIONS

There are people who go around the country promoting the use of living trusts. These people often charge from a few thousand dollars to as much as \$7000 to purchase their living trust forms. The simple answer is don't – the trust form you buy may simply be a generic form that will not be effective in your state (every state has its own laws) and also may not be right for your situation. Don't be taken in by advertisements, high-pressure sales techniques, or clever promotions. Moreover, signing the form does not create a living trust – you will not have created a trust until you properly transfer your assets into the trust. Many people who fall prey to scam artists pay a lot for a trust that is not valid and never even actually gets created. Don't let this happen to you. Here are a few basic tips to consider when you are ready to create an estate plan:

Tips:

- Do have an estate plan – everyone should have a plan that is right for them.
- Do consult experienced professionals – an attorney and an accountant who work permanently in your community can help make sure you create a plan that is right for your needs.
- If you do not have an advisor already, make sure you check out any professionals before you hire them: check their licensing status and their experience, obtain references, and understand how they want to be paid.
- Do not buy a plan from someone selling over the phone or door to door.

RESOURCES

- Your local bar association's trust and estate section or elder law section can refer you to lawyers who specialize in wills and living trusts. Also, ask for references from other lawyers or people who have used lawyers for wills and living trusts.
- Financial planners and certified public accountants can assist you with estate and trust planning, especially the tax implications of your plans. For more information about their services and how to find qualified professionals in your area, contact:
**AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS -**
1211 Avenue of the Americas, New York, NY
10036, 800-862-4272, www.aicpa.org
**CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS -**
1700 Broadway, Suite 2100, Denver, CO 80290,
888-CFP-MARK, www.cfp-board.org

Individual circumstances vary. Check with the appropriate professional regarding your options.



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