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WHY YOU SHOULD HAVE A LIVING TRUST

By Daniel C. Gasink

Should you look into a Living Trust Plan? Trusts have become increasingly common and have many benefits. They function as a sort of will substitute and can save your heirs substantial time and money. To help you understand wills and Trusts, this article begins with an analysis of the pros and cons of a will and then compares a will to a Living Trust

What a Will Does

Every adult needs a will. A will tells the court three important things: who will rear minor children, who will inherit from your estate, and who will represent you in the execution of your instructions. Everyone needs a will because we all know that we will someday pass away and we want to have our affairs in order long in advance.

Problems with Wills

Although necessary, wills have two main deficiencies: probate and incapacity. Probate (from the Latin '*probare*,' meaning 'to prove') is the name for the legal process of settling an estate, proving debts and creditors are paid, and eventually distributing the estate to the heirs. Like any bureaucratic process, Probate takes a while (9 months to two years is typical), is expensive (often 3-5% of probated assets are lost in fees and commissions), and generally tedious. Unlike other bureaucracies, the Probate process requires that information on your assets and family become public. Also, Wills only work after death. Your Will cannot help your family if you become incapacitated; they may have to petition a judge to appoint a guardian to manage your affairs. Although everyone needs to appoint someone to manage their affairs and designate their heirs, most would prefer to do so more quickly and privately than can be accomplished through a will.

What is a Trust?

A Living Trust is a set of instructions you leave for your family. It names your beneficiaries and representatives ('Trustees') like a will but is administered privately without any court interference. Trusts are legal documents that trace back to English Common Law. The typical Living Trust is a lengthy document which plans for all sorts of contingencies so that your beneficiaries do not need to ask a judge for instructions. You create your Living Trust and you can change or revoke it any time during your life.

How a Trust Works

A trust works much like a will. You serve as Trustee as long as you are willing and able. You appoint a sequence of Successor Trustees to take of your Trust after you. You have the full use of all your assets in life and you name beneficiaries who will take the remainder after your death. You can set up 'sub-trusts' to protect your spouse, children, or other beneficiaries with trusts of their own after your passing. One such sub-trust can double a couple's Federal Estate Tax exemption, potentially saving hundreds of thousands of dollars in avoidable taxes. Simply put: your Trustee has a duty to follow your instructions and your beneficiaries have a right to inherit according to your instructions. No one else is involved: neither the court and nor any other person.

Why Not Have a Trust?

A Living Trust has two drawbacks. First, you need to take the time and spend the legal fees to set up your plan. You must therefore spend your time and treasure to give a gift of lower cost and greater ease to those you leave behind. Second, a Living Trust must be 'funded' to be effective. You will change the titles on assets from 'John Doe' to 'John Doe, trustee of the John Doe Trust.' This critically-important step costs little but takes some time and effort. A good estate planning attorney will help you with the funding process. An unfunded Living Trust will not work correctly.

Conclusion

Should you look into a Living Trust Plan? Yes. A Living Trust does what a will does without the cost and delay of Probate. A Trust protects you in life as well as death. Trusts can provide protections for beneficiaries and can provide substantial Estate Tax Protection for couples. As Johnson, Gasink & Baxter, LLP, we provide no-cost consultations to encourage people like you to come in and learn whether a Trust makes sense for you. If you have never done so, you would be well-advised to speak to a lawyer about whether a Living Trust makes sense for you and your family. If you have a Trust, make sure it is funded and up-to-date. A Trust may not make sense for you, but if it does you can save your heirs considerable time and expense.



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About the Author:

Dan Gasink is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Dan takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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