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Living Trusts

A Highlights Brochure

**How You Can...
Avoid Probate,
Save Taxes,
and More.**

I have a will. Why would I want a living trust?

Contrary to what you have probably heard, a will may not be the best plan for you and your family, primarily because a will does not avoid probate when you die. A will must be verified by the probate court before it can be enforced.

Also, because a will can only go into effect *after* you die, it provides *no* protection if you become physically or mentally incapacitated. So, the court could easily take control of your assets *before* you die, a concern of millions of older Americans and their families.

Fortunately, there is a simply and proven alternative to a will - the *revocable living trust*. It avoids probate, and lets you keep control of your assets while you are living - even if you become incapacitated - *and* after you die.

What is probate?

Probate is the legal process through which the court sees that, when you die, your debts are paid and your assets are distributed according to your will. If you don't have a valid will, your assets are distributed according to state law.

What's so bad about probate?

- ◆ **It can be expensive.** Legal/executor fees and other costs must be paid *before* your assets can be fully distributed to your heirs. Costs vary in each state, but can be as high as 6%-10% of an estate's value. If you own property in other states, your family could face multiple probates, each one according to the laws in that states.
- ◆ **It takes time**, usually 9 months to 2 years. During part of this time, assets are usually frozen so an accurate inventory can be taken. Nothing can be distributed or sold without court and/or executor approval. If your family needs money to live on, they must request a living allowance, which may be denied.
- ◆ **Your family has no privacy.** Probate is a public process, so anyone can see what you owned and who you owed. The process "invites" disgruntled heirs to contest your will and can expose your family to unscrupulous solicitors.
- ◆ **Your family has no control.** The probate process determines how much it will cost, how long it will take, and what information is made public.

Doesn't joint ownership avoid probate?

Not really - it usually just *postpones* it. With most jointly owned assets, when one owner dies, full ownership *does* transfer to the surviving owner without probate. But if that owner dies without adding a new joint owner, or if both owners die at the same time, the asset must be probated before it can go to the heirs.

Watch out for other problems. When you add a co-owner, you lose control. Your chances of being named in a lawsuit and of losing the asset to a creditor are increased. There could be gift and/or income tax problems. And since a will does not control most jointly owned assets, you could disinherit your family.

With some assets, especially real estate, all owners must sign to sell or refinance. So if a co-owner becomes incapacitated, you could find yourself with a new "co-owner" - the court. Even if the ill

owner is your spouse or domestic partner.

Why would the court get involved at incapacity?

If you cannot conduct business due to mental or physical incapacity (Alzheimer's, stroke, heart attack, etc), only a court appointee can sign for you - even if you have a will. (Remember, a will only goes into effect *after* you die.)

Once the court gets involved, it usually stays involved until you recover or die. The court, not your family, controls how your assets are used to care for you. This public process can be expensive, embarrassing, time consuming and difficult to end if you recover. And it does not replace probate at death - your family could have to go through the court system ***twice!***

Does a durable power of attorney prevent this?

A durable power of attorney lets you name someone to manage your financial affairs if you are unable to. However, some financial institutions will not honor one unless it is on *their* form. And, if accepted, it may work *too well* - it can simply give someone a blank check" to do whatever he/she wants with your assets. It can be very effective when used *with* a living trust, but risky when used alone.

What is a living trust?

A living trust is a legal document that, just like a will, contains your instructions for what you want to happen to your assets when you die. But, *unlike* a will, a living trust avoids probate at death, can control all of your assets, and prevents the court from controlling your assets at incapacity.

How does a Living Trust avoid probate and prevent court control of assets at incapacity?

When you set up a living trust, you transfer assets from *your* name to the name of *your trust*, which you control - such as from "Bob Smith" to "Bob Smith, trustee under trust dated 01/01/0?."

Legally you no longer own anything (don't panic, everything now belongs to your trust), so there is nothing for the courts to control when you die or become incapacitated. The concept is very simply, but this is what keeps you and your family out of the courts.

Do I lose control of the assets in my trust?

Absolutely not. You keep full control. As trustee of your trust, you can do anything you could do before - buy/sell assets, change or even cancel your trust (that's why it's called a *revocable* living trust). You even file the same tax returns. *Nothing changes but the names on the titles.*

Is it hard to transfer assets into my trust?

No, and your attorney, trust officer, financial adviser and insurance agent can help. You need to change titles on real estate (in- and out-of-state) and other titled assets (stocks, CDs, bank accounts, other investments, insurance, etc.). Most living trusts also include jewelry, clothing, art, furniture, and other assets that do not have titles.

Also, beneficiary designations on some assets (like insurance) should be changed to your trust so the court cannot control them if a beneficiary is incapacitated or no longer living when you die. Retirement accounts like IRA, 401[k], etc. are exceptions.

Doesn't this take a lot of time?

It will take *some* time - but *you* can do it now, or you can pay the courts and attorneys to do it *for* you later. One of the benefits of a living trust is that all of your assets are brought together under *one* plan. Do not delay "funding" your trust. If can only protect assets that have been transferred into it.

If something happens to me, who has control?

If something happens to you, your handpicked successor trustee will step in. If a corporate trustee is already your trustee or co-trustee, it will continue to manage your trust for you.

What does a successor trustee do?

If you become incapacitated, your successor trustee looks after your care and manages your financial affairs for as long as needed, using your assets to pay your expenses. If you recover, you automatically resume control. When you die, your successor trustee pays your debts and distributes your assets. All this is done quickly and privately, according to instructions in your trust, *without* court interference.

Who can be successor trustee?

Successor trustees can be individuals (spouse, domestic partner, adult children, other relatives, or trusted friends) and/or a corporate trustee. If you choose an individual, you should name more than one in case your first choice is unable to act.

Does my trust end when I die?

Unlike a will, a trust does not *have* to die with you. Assets can stay in your trust, managed by the trustee *you* have chose - until your beneficiaries (including minors) reach the age(s) you want them to inherit, or to provide for a loved one with special needs.

How can a living trust save on estate taxes?

If you die in 2002 and the net value of your estate is more than \$1,000,000.00, federal estate taxes (starting at 50%) must be paid. If married, your living trust can include a provision that will let you and your spouse leave up to a \$2,000,000.00 estate tax free.

Doesn't a trust in a will do the same thing?

Not quite. A will can contain wording to create a *testamentary* trust to save estate taxes, care for minors, etc. But, because it is part of your will, this trust cannot go into effect until after you die and the will is probated. So it does not avoid probate and provides *no* protect at incapacity.

Is a living trust expensive?

Not when compared to all of the costs of court interference at incapacity and death. How much *you* pay will depend on how complicated your plan is. Be sure to get an estimate.

How long does it take to get a living trust?

It should only take a few weeks to prepare the legal documents after you have make the basic

decisions.

If I have a living trust, do I still need a will?

Yes, you need a “pour-over” will that acts as a safety net if you forget to transfer an asset to your trust. When you die, the will “catches” the forgotten asset and sends it into your trust. The asset may have to go through probate first, but it can then be distributed as part of your living trust plan.

Is a “living will” the same as a living trust?

No. A living trust is for *financial* affairs. A living will, also called an advance health care directive, is for *medical* affairs - it lets others know how you feel about life support in terminal situations.

Are living trusts new?

No, they have been used successfully for hundreds of years.

Who should have a living trust?

Age, marital status and wealth do not really matter. If you own titled assets and want your loved ones to avoid court interference at your death or incapacity, consider a living trust. You may also want to encourage other family members to have one so *you* will not have to deal with the courts at *their* incapacities or deaths.

BENEFITS OF A LIVING TRUST

- ◆ Avoids probate at death, including multiple probates if you own property in other states.
- ◆ Prevents court control of assets at incapacity.
- ◆ Brings all of your assets together under *one* plan.
- ◆ Provides maximum privacy.
- ◆ Quicker distribution of assets to beneficiaries.
- ◆ Assets can remain in trust until you want beneficiaries to inherit.
- ◆ Can reduce or eliminate estate taxes.
- ◆ Inexpensive, easy to set up and maintain.
- ◆ Can be changed or canceled at any time.
- ◆ Difficult to contest.
- ◆ Prevents court control of minor’s inheritances.
- ◆ Can protect dependents with special needs.
- ◆ Prevents unintentional disinheritance and other problems of joint ownership.
- ◆ Peace of mind.

	With No Will	With A Will	With A Living Trust
At Incapacity (unable to handle your financial affairs)	<i>Court Control:</i> Court appointee oversees your care, must keep detailed records, reports to court, and usually must post bond (even if appointee is your spouse). Court approves all expenses, oversees financial affairs.	<i>Court Control:</i> Same as no will.	<i>No Court Control:</i> Your successor trustee manages your financial affairs according to instructions in your trust for as long as necessary. (In some states, court intervention may be required for health care decisions).
At Death	<i>Probate:</i> Court orders your debts paid and assets distributed according to state law.	<i>Probate:</i> Same as no will, but assets distributed per your will (if valid and any contests are unsuccessful)	<i>No Probate:</i> Debts paid and assets distributed by successor trustee according to instructions in your trust.
Court Costs, Legal & Executor Fees	<i>At Death:</i> Often estimated at 10-12% of estate's value. <i>At Incapacity:</i> Impossible to estimate.	Same as no will. Costs can increase if will is contested.	<i>At Death:</i> Usually none if no estate taxes. <i>At Incapacity:</i> None (attorney can be helpful for larger estates).
Time	<i>At Death:</i> Usually 9 months to 2 years before heirs can inherit. <i>At Incapacity:</i> Court involved until recovery or death.	Same as no will.	<i>At Death:</i> Usually just weeks (larger estates may take longer for estate tax filing). <i>At Incapacity:</i> No delays.
Flexibility & Control	<i>None:</i> Court processes, not your family, have control at incapacity and death. When you die, assets are distributed according to state law.	<i>Limited:</i> Same as no will except, when you die, assets are distributed according to your will (if valid and any contests are unsuccessful). You can change your will at any time.	<i>Maximum:</i> You can change/discontinue your trust at any time. Assets stay under control of your trust, even at incapacity and after your death. More difficult than a will to contest.
Privacy	<i>None:</i> Court proceedings are public record. Family can be exposed to disgruntled heirs, unscrupulous solicitors.	<i>None:</i> Same as no will.	<i>Maximum:</i> Living trusts are not public record. Your family can take care of your financial affairs privately.