



Understanding Living Trusts

Living trusts basically allow you to control who gets your assets after you die. However, there are other prudent reasons for creating a living trust – like estate planning. A living trust can help your beneficiaries avoid the expense and delay of probate. Probate can last three years and probate fees can eat up to 10% of your estate's value. A living trust also affords you more privacy than a will because you don't have to register it in probate court. A living trust may also help avoid certain estate taxes if properly prepared. Finally, a living trust allows you to designate someone you trust to manage your assets if you become incapacitated and are unable to manage them yourself.

THE COMPOSITION OF A LIVING TRUST

A living trust is created with a document known as a Declaration of Trust. This is the legal document which names your beneficiaries, describes your trust property, and provides for the terms of its transfer. The living trust is managed by the trustee; in most cases, the initial trustee is the person who creates the living trust. You may later designate someone else or an institution, like a bank, to act as a trustee. The trustee is also responsible for managing the property covered by the trust.

A trust allows you to gather all your significant property and assets together in one document. A living trust is an easy way to keep track of all your assets and manage them as a single unit. You control the trust and can do whatever you want with the property in the trust – you can even transfer assets into or out of the trust. Most importantly, a trust allows you to provide for the quick and efficient distribution of your property to loved ones when you die.

PROBATE – REASONS TO AVOID IT

Probate is the legal process the courts use to implement a will. It can take anywhere from six months to three years to probate a will and usually requires the service of an attorney. Even if you die without a will (intestate) your estate must still go through the probate process. In that case, the court decides how to distribute your estate among your relatives. The typical probate procedure includes the following steps:

1. The will is filed with the local probate court (your will becomes a public record).
2. An inventory is conducted of your property.
3. Your property is then appraised.
4. All debts, including death taxes, are paid.
5. The court validates the will.
6. Court costs, attorney's fees and executor's fees are all paid from the estate.
7. Then, and only then, the remainder of the estate is distributed to your heirs.

A living trust helps avoid probate because the distribution of your assets is determined by the trust – not a will. You technically do not "own" the assets, the trust does. You can still control the trust assets because you are the "trustee". But when you die, since you don't "own" the trust property, you avoid probate for the assets placed into the trust.

Remember, you will still need a simple will for disposition of any property not included in the trust. So long as all of your significant property is transferred into the living trust, then probating a pour-over will should be a simple process.

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DISTRIBUTIONS FROM A TRUST

1. **Primary Beneficiaries:** Beneficiaries that are designated to receive specific property.
2. **Alternate Beneficiaries:** Beneficiaries that receive property if the primary beneficiary dies before you.
3. **Residuary Beneficiaries:** Beneficiaries that receive all property not left to either the primary and alternate beneficiaries.

In general, you may choose anyone or any entity you wish to be your trust beneficiary. If community property is held in a living trust, then both spouses are typically the grantors. Care must be taken to carefully designate the property held in a living trust by married persons as either separate or community property and how it is to be distributed upon death.

You can leave property to minor-age children through a living trust by designating an adult to manage the property on behalf of the child. This is called a children's sub-trust. The sub-trust will end when the terms and conditions you specify are satisfied; for example, when your child turns 21 or when they graduate from college. It is important to remember that you cannot designate a guardian for your minor children through a living trust; this must be done specifically through a traditional will. If you wish to exclude a child from your trust you should state your intention explicitly. If it appears that you unintentionally overlooked one of your children in your trust, a court may modify the trust for that child's benefit.

COMMONLY ASKED QUESTIONS

Q. Who are the parties to a trust?

A. A typical trust is the Family Trust in which the husband and wife are the trustees with their children as the beneficiaries. Those who establish the trust and transfer their property into it are known as trustors or settlors. The settlor's usually appoint themselves as trustees and they are the primary beneficiaries during their lifetime. After their passing, their children and grandchildren usually become the primary

beneficiaries if the trust is to survive, or the beneficiaries receive distributions directly from the trust if it is to close out.

Q. What is a living trust?

A. Sometimes called an Inter-vivos Trust, the living trust is created during the lifetime of the settlors (as opposed to being created by will after death) and usually terminates after they die and the body of the trust is distributed to their beneficiaries.

Q. Can a trust hold title to real property?

A. No; the trustee holds the property on behalf of the trust

Q. Is a trust the best way to hold my property?

A. Only your attorney or accountant can answer that question; some common reasons for holding property in a trust are to minimize or postpone death taxes, to avoid a time consuming probate, and to shield property from attachments by certain unsecured creditors.

Q. Can I homestead property which is held in a trust?

A. Yes, if the property otherwise qualifies.

Q. Can a trustee borrow money against the property?

A. A trustee can take any action permitted by the terms of the trust, and the typical trust agreement does give the trustee the authority to borrow and encumber real property. However, not all lenders will lend on a property held in a trust, so check with your lender first.

Michael Ertem

(925) 973-5701

mertem@bayeq.com