

Estate Planning with a Living Trust

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Many estate plans include the use of a Living Trust. But what exactly is a Living Trust and why should you consider having one? You may find that a Living Trust is an important part of your estate plan, along with a Will, a Power of Attorney, and various health directives.

A Living Trust is also known as a revocable trust. This type of trust can be dissolved by the trust's grantor (creator) at any time. The use of a living trust does not reduce one's income taxes, nor does it reduce any estate tax due at death. The advantages of a living trust are more administrative and can provide peace of mind and a little privacy.

A Living Trust does not replace a Will, but a properly drafted Will should work in concert with the Living Trust. Both documents must work together to make sure your wishes are documented and that your estate plan is implemented.

A Living Trust should contain all of your assets, including cash and investments, real estate, and even automobiles and artwork. These trusts will generally not hold life insurance, which should be in a separate trust, nor retirement assets such as IRAs or 401(k) accounts.

Flexibility

Living Trusts provide flexibility and ease in updating one's estate plan. Unlike an Irrevocable Trust which cannot be changed by the grantor, a Living Trust can be updated at any time. As one's financial affairs mature and change over time, the estate plan - and therefore the terms of the Living Trust - can be revised to reflect updated beneficiaries and the terms of any future trusts.

Privacy

Living Trusts can act as Will-substitutes, in which the disposition of one's assets can be laid out in private. When a decedent's estate is admitted to probate, the Will is filed and becomes a publicly accessible document. However, trusts created by the decedent are not public documents and can be used to dispose of estate assets without public inspection.

A “pour-over” Will directs that any assets owned at death are transferred to the Living Trust. Even though the Will may be accessed by the public through the probate process, it will not disclose the specifics of your estate plan - which can be kept private in the terms of the Living Trust. For example, if a high-profile individual wanted privacy around his/her estate distributions [instead of the public having visibility on them](#), they could leverage a Living Trust and a pour-over Will.

Avoiding Probate

The probate process applies to assets owned by the decedent at death. When assets are owned in a Living Trust, they are not subject to the probate process, which reduces the time and cost associated with probate. This is one reason that funding the Living Trust is important, as assets owned by a decedent are subject to probate.

In addition, the probate process must take place in every state where the decedent owned the property. Out-of-state property will require an executor to go through that state’s probate process, which can be costly and difficult for out-of-state executors. If out-of-state property is owned in a Living Trust, then out-of-state probate may be avoided - again saving time and costs.

Finally, a co-trustee can administer the Living Trust immediately after the death of the grantor, without having to wait for the appointment of an executor through the probate process. Until an executor is officially named, it may be difficult, if not impossible, to access non-trust financial assets, make investment decisions, or provide cash for a surviving spouse. However, the Living Trust does not go through the probate process and the co-trustee can act long before an executor would be confirmed.

Use During Lifetime

While many of the advantages of a Living Trust involve estate administration, they can be used while the grantor is still alive as well. When a grantor can manage his or her own affairs, there may be little change to one’s financial life when the Living Trust is initially funded. But if a grantor needs assistance, or is unable to handle financial decisions, then the Living Trust co-trustee can step in and support in the

financial management of the trust assets.

This transition can happen suddenly or gradually, and it requires no court or doctor involvement. A co-trustee could act temporarily for a short duration of time or for the rest of the grantor's life if necessary. A co-trustee is legally able to act on behalf of the trust from day one, even if that isn't necessary until many years after the trust is established and funded.

Conclusion

An effective Living Trust can be an important part of a comprehensive estate plan. In addition to designing and drafting the trust, the trust must be funded with assets. This is a vital aspect of the plan which can sometimes be overlooked by other planning professionals.

A Living Trust can be used to secure your future financial well-being and to ensure that your estate plan is up-to-date at all times. This flexible trust can be updated and revised whenever necessary. Estate probate will be minimized and out-of-state probate may be eliminated. To discuss how a Living Trust can be used in your estate plans today and how we can help you design and implement that plan, contact your Anchin Relationship Partner.