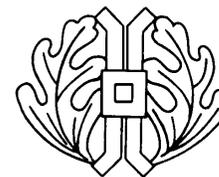


PREVENTIVE LAW SERIES

LIVING TRUSTS



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WHAT IS A LIVING TRUST?

A living trust is just one type of trust. Many persons are curious about the concept of a "living trust" because they have heard that it will be of assistance in their estate planning. This handout will discuss the living trust and its advantages and disadvantages. This handout is not comprehensive, but is a good overview. If you are interested in using this option in your estate planning, you should consult a probate or estate planning attorney. The Legal Assistance Department of the Naval Legal Service Office does not draft living trusts.

A trust is the separation of the ownership of property into two parts with legal title (management) of the property in one person and beneficial ownership (equity) in another person. The creator of the trust is referred to as the settlor or grantor. The person with legal title, management or possession of the trust assets is the trustee. The person entitled to the income or other benefits of the trust is the beneficiary. In the typical living trust the grantor, trustee, and beneficiaries are the same person! There are two general types of trusts -- the living trust and the testamentary trust. A living trust is created during its maker's lifetime, while a testamentary trust is created upon its maker's death in his or her will. Living trusts are further divided into revocable trusts, which may be canceled or changed during its existence, and irrevocable trusts, which cannot be altered.

In the typical revocable living trust, you would transfer your property to the trust by written agreement. The agreement basically provides for the trustee to pay you all of the income from the trust during your lifetime together with any principal which you may request. You may amend or revoke the trust or change the trustee at any time. However, upon your death, the trust becomes irrevocable and its terms cannot be changed. The trustee, or a successor trustee if you were the trustee, continues to administer the trust assets, and, like a will, the trustee must distribute any property in accordance with the terms of the trust agreement which apply at your death.

WHAT ARE THE ADVANTAGES OF A LIVING TRUST?

A living trust has a number of advantages. First, the trust usually provides for continuous management of the trust assets regardless of the grantor's physical or mental incapacity. Usually, there is no need to appoint a conservator (or guardian in the case of a minor) for an incompetent person, since the trustee manages the trust assets according to the terms of the trust agreement. Proceedings for the appointment of a conservator or guardian for the property of a person involve court control of the assets of the incompetent person, substantial legal fees, the requirement of a bond and often may provoke unpleasant family tension or quarrels. Accordingly, elderly or ill persons find this feature of the living trust particularly attractive. If the trust provides for it, the trustee may collect income, purchase and sell trust assets, manage a business or real estate, and pay hospital or other medical bills. When the crisis ends, and the grantor recovers, the grantor can usually revoke the trust if he desires or take up management of the assets. If the grantor should happen to die, the trust should provide for the disposition of trust assets to beneficiaries.

Second, trusts are a good means of keeping property separate. For example, if one spouse has inherited property from his or her parents and desires that the property be kept separate from the other spouse, the separate property can be placed in a trust.

Another advantage of the revocable living trust is that assets placed in a living trust should avoid

probate. This may result in the reduction of probate expenses, since many probate fees are based on the value of the assets passing through probate. In addition to a possible reduction or elimination of probate fees, assets placed in a living trust would usually avoid delays in distribution caused by the probate court. Assets in a living trust can usually be transferred immediately to the beneficiaries.

Finally, living trusts may provide a tax benefit. In 1999, a federal estate tax will be imposed on estate's valued at more than \$650,000. A properly drafted living trust may minimize or eliminate the federal estate tax.

WHAT ARE THE DISADVANTAGES OF A LIVING TRUST?

The living trust is not without disadvantages. For example, transferring the title in a home or other real estate, bank accounts, securities and other investments into a living trust can be troublesome. In refinancing a home, many lenders demand that the house be taken out of a living trust pending refinancing because they are unwilling to extend credit to a trust. Also, the costs associated with creating the living trust can mount. For instance, many law firms charge a flat fee for the trust agreement, but additional fees accrue each time property or assets are transferred into the trust.

Also, military members may lose some of the exemptions which they receive under various states' laws by transferring ownership into a living trust, which is not afforded the benefits of the Soldiers' and Sailors' Civil Relief Act. Finally, the validity of the trust is only as good as the expertise of the lawyer assisting the client. For instance, problems may arise in transferring property located in other states into a living trust. Today, the living trust business is booming, particularly in California, and many lawyers of differing abilities have inundated the market. Potential clients should be wary of low cost, and possibly lower quality, services which may not afford the protection which the client had intended. Additionally, you should be aware that there have been many scams involving living trusts shut down by the Federal Trade Commission. Exercise caution.

In conclusion, a living trust is an excellent estate planning tool for many persons. However, not all persons require a living trust. Young, active-duty military personnel with relatively few assets would probably incur a greater expense by obtaining a living trust than the expenses associated with the probate of a small estate. Also, the mobility of younger persons presents problems with observing trust formalities, e.g., continually acquiring and transferring property to the trust, for many years. On the other hand, older persons, particularly retired persons with substantial assets and tax avoidance concerns, may benefit from a living trust. Ultimately, each person must weigh the prospect of saving money for their survivors against the effort and expense of establishing and maintaining a living trust.

At the Legal Assistance Office, licensed attorneys are prepared to further discuss the advantages and disadvantages of living trusts.

LEGAL ASSISTANCE APPOINTMENTS:

For an appointment to see a legal assistance attorney, please contact the Legal Assistance Office, located in Building 610, Naval Air Station North Island, by telephone at (619) 545-6278.

RESOURCES:

San Diego County Bar Association Attorney Referral Service (619) 231-8585
Federal Trade Commission (877) 382-4357
<http://www.ftc.gov>
California Probate Code section 15200 et seq.