

## **THE LIVING TRUST**

A trust is a written agreement with yourself where you put legal title to certain property, called the trust property, in the name of a person or firm. This person or firm is called the trustee. This person, the trustee, can be you. It is to be held for the benefit of yourself and/or a third party who is called the beneficiary. A living trust is created during your lifetime and may be funded or un-funded.

A funded living trust is an alternative to a will and to probate. In a funded living trust, you put property and money into a trust during your lifetime for the benefit of yourself and possibly other family members. You can change or revoke the living trust at any time. Generally, you are both the creator of the trust and, while you are living, the beneficiary of the trust, and as mentioned above, the trust's trustee.

An un-funded living trust typically receives assets through a simple, pour-over will following your death.

During your lifetime, the trustee (again who may be you) of a funded living trust handles your assets in accordance with your instructions for your benefit. You and other parties you may name may receive monetary distributions from the trust. A funded living trust can manage the everyday details of your personal finances.

If you should ever become incapacitated, alternate trustees are usually named in the trust to assume trustee responsibilities, the most important of which is providing for your financial needs or the financial needs of your beneficiaries. You will usually name a spouse/partner, adult child, relative, friend or a bank as your alternate trustee. Thus, the trust, through the trustee, will continue managing your assets for your benefit.

Your trustee provides for your maintenance and support from the assets in your trust. This usually occurs without having to involve the court. This saves your partner and family from having to have a court appointed conservator to handle your affairs. The court procedure to have a conservator appointed can be expensive and requires that a detailed annual accounting of your assets and liabilities be filed with the court.

Although you may have left detailed instructions on how to handle your estate upon your death in your will, your will has no effect until your death. If you become incapable of managing your own affairs, then a living trust can be helpful.

After your death, your trustee will follow the terms of your living trust. Your living trust may direct that the assets held in the trust be distributed to your named beneficiaries or the living trust may direct that the assets continue to be held in the trust and managed for the benefit of your beneficiaries.

Unlike a will, at your death your trust agreement is not filed with the court and does not become public. However, the trust must be registered with the court and the beneficiaries are entitled to copies of the trust. This allows you to keep your financial affairs private. If

all property was transferred to the trustee during your lifetime, probate of your estate will not be necessary.

To summarize, in general terms, a living trust has several advantages if it is set up properly and fully funded, meaning all of your assets are placed in the trust. First, a fully funded trust can reduce or eliminate the need for probate upon your death. Second, a Florida resident who owns real property in another state can put that real estate into a living trust and thereby reduce or eliminate the need for probate in the other state. (This is subject to the laws of the state where the property is located.) Third, a living trust may avoid the need for a conservatorship for you if you become legally disabled. However, a living trust cannot avoid a guardianship, because the trustee of a living trust cannot make medical or care decisions for you unless the trustee is the named agent for you under a separate Medical Power of Attorney, discussed in a previous article which this web site has archived for your review.

There are vast marketing schemes targeting people to buy living trusts. Not everyone needs one. They try to sell it to you by making false or misleading claims such as:

**Living trusts will help you qualify for public assistance benefits. False.** A living trust will not help you qualify for public assistance benefits, particularly nursing home Medicaid benefits.

**Living trusts help you avoid contested wills. Misleading.** Because a "trust" and a "will" are separate legal concepts, a trust is not subject to a will contest. However, trusts just like wills are subject to attack on the basis of lack of capacity, undue influence, and fraud.

**Living trusts help you avoid your creditors. False.** During your lifetime, assets in a living trust are subject to the claims of your creditors. After death, these assets are subject to the claims of your estate's creditors.

**Living trusts save taxes. They claim your estate can be reduced by a 55 percent death tax. Misleading.** Most Floridian's' estates will face no death taxation at all. If your estate is taxable, a will can accomplish exactly the same tax savings as a trust at a much cheaper cost.

**Probate takes years to complete. Misleading and Very Unlikely.** Nontaxable probate estates generally only take a year or less to complete. There are rare circumstances where families and/or the IRS fight for an extended period after a death. Such disputes can cause delays in the administration of either a probate or a living trust. In most circumstances the administration of a living trust is no more time efficient than the administration of a will in probate.

**Everyone should have a living trust. False.** While a living trust is appropriate for some people, the cost of creating, funding and administering a living trust outweighs the benefits for many people. It is important to decide what your needs are before creating a living trust

Remember that in estate planning, one size does not fit all. While your will or trust may be similar to your neighbor's, each is different for special, personal reasons. Trusts are complex legal documents that require the use of competent and experienced estate planning attorneys. For this reason, you should not try to create your own trust or purchase a pre-printed living trust, or just get one out of "fear or false, misleading statements". Beware of purchasing a living trust from a national marketing organization where your individual needs are not considered and where you have not met with the attorney who prepares the document.