Estate Matters
The Truth About Living Trusts

A slick salesman offers a living trust for just a few thousand dollars that will reduce taxes, avoid probate, save time and money, and avoid creditors. It almost seems too good to be true! Beware – it may be. Real benefits of these “trust factories” (often non-attorneys) often fail to live up to the claims.

Living or revocable trusts may be beneficial. A trust can help avoid multiple probate proceedings for properties owned in multiple states. They can be a useful tool if your financial holdings are large and complicated, and can be used to pass a farm or family business to the next generation. And a trust may prevent a will contest. Much of the time, however, living trusts mainly benefit those selling them.

Q. - Do living trusts really reduce taxes?
Absolutely not! During life, trust assets and income are taxed as your own. Likewise, after death, trust assets are considered estate assets for federal estate tax purposes. Ordinary tax strategies such as charitable deductions, unified tax credits, and bypass trusts can all be included in a will. Additionally, trusts can actually accelerate Maryland inheritance taxes.

Q. - Can I avoid probate with a living trust?
Probably not. Since assets not transferred into the trust must pass through probate, a will is still advised. And probate avoidance is overrated. Recent changes streamlined and simplified procedures, and probate fees do not consume a significant portion of the estate. For example, probate fees for a quarter to a half million dollar estate is only $500 – not exactly worth spending thousands of dollars to avoid! And probate offers advantages a trust does not including court supervision, notice to beneficiaries, and an opportunity for beneficiary participation.

Q. - Must a living trust be used to manage affairs and avoid guardianship?
A properly drafted power of attorney is usually far less expensive and more efficient than a living trust, and can be used to manage more than just assets.

Q. - Does a living trust save time and money?
Living trust costs are often not justified by potential future savings. The same money in a prudent long term investment would likely more than cover probate and administrative costs. Often, after spending thousands of dollars on a living trust, an individual will fail to transfer all assets and will still have the estate probated. Having trust-titled assets may make matters more difficult during life. And while a will is relatively easy to change through a codicil, a living trust is much more difficult and expensive to modify.

Q. - Does a living trust avoid creditors?
No. During life, living trust assets are subject to creditor claims. After death, language protecting a beneficiary from creditors can just as easily be included in a will. Additionally, probate limits creditor claims to six months while a trust is generally subject to a three year statute of limitations.

While living trusts may be useful in certain limited situations, in most cases the cost and burden of transferring all property into it outweigh future theoretical savings. Before committing all your assets to a living trust, make sure you have all the facts and are dealing with a qualified professional.

Disclaimer: This general information is neither legal opinion or advice, nor a complete estate planning discussion, and refers to Maryland law - your state’s may differ. Please seek independent legal advice from an attorney for specific information.

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