

## Top Benefits of a Living Trust

It's a given that you should have a written legal document distributing your assets at your death. Now the question becomes: should you have a will or a living trust?

It is estimated that only about 20% of Americans have living trusts. So should you join that 20 percent?

Here are the top reasons why a living trust could just benefit you.

### **What is a Living Trust and how is it different from a Last Will?**

A living trust (sometimes called an "inter vivos" or "revocable" trust) is a written legal document through which your assets are placed into a trust for your benefit during your lifetime and then transferred to designated beneficiaries at your death by your chosen representative, called a "successor trustee."

On the other hand, a will is a written legal document with a plan of distribution of your assets upon your death. Your executor, as named in the will, oversees this process, and notably, nothing in your will takes effect until after you die.

### **A Living Trust Avoid Probate**

One of the first benefits of a Living Trust is that it avoids probate. With a valid will, your estate will go through probate, the court proceedings through which your assets are distributed according to your wishes by the executor.

A living trust, on the other hand, does not go through probate, which often means a faster distribution of assets to your heirs—from months or years with a will down to weeks with a living trust. Your successor trustee will pay your debts and distribute your assets according to your instructions.

Notably, both documents allow you to choose a guardian for your children in the event of your death.

### **A Living Trust May Just Save You Money**

Remember this really all depends on your financial situation. At first, drafting a living trust will likely cost more than drafting a will as it is a more complex legal document. Moreover, you must also transfer your assets such as bank accounts, stocks, and bond accounts and certificates to the trust through separate paperwork; simply writing up a living trust does not actually "fund the trust."

Other procedures involved in an estate plan with a living trust could also include changing the beneficiary on your life insurance policy to the trust, appropriately dealing with your IRA or 401k plan, and also creating a "pour-over will" that will provide for the distribution of any assets acquired after the creation of the living trust but before your death or any assets inadvertently excluded.

Note that the pour-over will, just like any will, will have to go through probate.

While a will costs less to draft, a living trust can save your estate money at the time of your death as the distribution of assets in the trust will not go through probate; court costs for probating your will are taken from estate, although note that for a simple, uncontested will, costs are often nominal.

Regarding contests, living trusts will likely hold up better in the event that someone comes forward contesting the distribution of your assets; accordingly, court costs to cover any will contests may also need to be considered.

As far as savings of income and estate taxes, there is often no substantial difference between living trusts and wills, although living trusts may provide savings for married couples in the form of joint living trusts.

Note that for people with simple estate plans and for young married couples with no children or significant assets, a living trust is probably not financially beneficial.

### **Living Trust Automatically Appoints Someone to Oversee Your Affairs**

A Living Trust is written so that your trustee can automatically jump into the driver's seat if you become ill or incapacitated.

On the other hand, if you simply have a will without a durable power of attorney, the court will appoint someone to oversee your financial affairs who will have to report to the court for approval

of expenses, sales of property, etc. The most recent public example of this is the conservatorship of Britney Spears' father over his daughter's financial affairs.

Note that if you draw up a durable power of attorney, including one for health care decisions, you can avoid a court-appointed conservator for your affairs.

With a living trust, however, your handpicked successor trustee can manage your affairs without court intervention, and since the trust is revocable, if you dispute your incapacity, you can retain control yourself.

#### **A Living Trust Provides Privacy**

One big difference between the two legal documents is the level of privacy offered with a living trust. As a living trust is not made public, upon your death, your estate will be distributed in private. A will, on the hand, is public record and so all transactions will be public as well.

Another difference is the handling of out-of-state property you own upon your death. With a will, that property will have to go through probate in its own state; this is avoided with a living trust.

#### **Conclusion**

While a living trust makes sense for some people, wills are just fine for others. A general rule among tax planners is that the larger the value of the estate, the greater need there is for a living trust-although even this is not foolproof.