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Financial Planning & Investment Management

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The Savvy Investor

Estate Planning Frequently Asked Questions

Why do I Need an Estate Plan?

A solid, effective estate plan ensures that your wealth will remain intact as it passes to your beneficiaries, instead of being siphoned off to the government.

What is a Living Trust?

A trust, like a corporation, is an entity that exists only on paper but is legally capable of owning property. A flesh-and-blood person, however, must actually be in charge of the property; that person is called the trustee. You can be the trustee of your own living trust, keeping full control over all property legally owned by the trust.

There are many kinds of trusts. A "living trust" (also called an "inter vivos" trust by lawyers who can't give up Latin) is simply a trust you create while you're alive, rather than one that is created at your death under the terms of your will.

All living trusts are designed to avoid probate. Some also help you reduce estate taxes, and others let you set up long-term property management.

What's the Difference Between Having a Will and a Living Trust?

A will is a legal document that describes how your assets should be distributed in the event of death. The actual distribution, however, is controlled by a legal process called probate. Upon your death, the will becomes a public document available for inspection by all comers. And, once your will enters the probate process, it's no longer controlled by your family, but by the court and probate attorneys.

A Living Trust avoids probate because your property is owned by the trust. So technically, there's nothing for the probate courts to administer.

There is one other crucial difference: A will doesn't take effect until your death, and is therefore no help to you during lifetime planning, an increasingly important consideration since Americans are now living longer. A Living Trust can help you preserve and increase your estate while you're alive and offers protection should you become mentally disabled.

What Happens If I Become Mentally Disabled and Have Only a Will?

Unfortunately, you would be subject to "living probate," also known as a conservatorship or guardianship proceeding. If you become mentally disabled before you die, the probate court will appoint someone to take control of your assets and personal affairs. These "court-appointed agents" must file a strict accounting of your finances with the court. The process is often expensive and time-consuming.

If I Set Up a Living Trust, Can I Be My Own Trustee?

Yes. In fact, people who create most Living Trusts act as their own trustees. If you are married, you and your spouse can act as co-trustees. You will have absolute and complete control over all of the assets in your trust. In the event of a mentally disabling condition, your handpicked successor trustee assumes control over your affairs, not the court's appointee.

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Will a Living Trust Avoid Income Taxes?

No. It's not a vehicle for reducing income taxes paid every April 15th. Its purpose is to avoid probate and reduce or even eliminate federal *estate* taxes. In fact, if you're the trustee of your Living Trust, you will file your income tax returns exactly as you filed them before the trust existed. There are no new returns to file and no new liabilities are created.

If I Have a Living Trust, Do I Still Need a Will?

Yes you do – and here's why.

A will is an essential back-up device for property that you don't transfer to your living trust. For example, if you acquire property shortly before you die, you may not think to transfer ownership of it to

your trust – which means that it won't pass under the terms of the trust document. But in your back-up will, you can include a clause that names someone to get any property that you don't leave to a particular person or entity.

If you don't have a will, any property that isn't transferred by your living trust or other probate avoidance device (such as joint tenancy) will go to your closest relatives in an order determined by state law. These laws may not distribute property in the way you would have chosen.

Can Any Attorney Create a Living Trust?

We recommend choosing an attorney whose practice focuses on estate planning.

We are investment advisors and work with an excellent team of estate attorneys.