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Living Trusts 101

Living trusts are becoming more popular. An AARP study says that almost a quarter of Americans age 50 and over have one. That's almost double the percentage of 10 years ago. Yet there is still a lot of misinformation and confusion about living trusts. Your lawyer is your best source of information on whether a living trust is right for you, but this article, the first of a series, tries to give you an overall picture of their advantages and disadvantages.

What They Are

A living trust—an **inter vivos trust** if you want to be formal—allows you to put your assets in a trust while you're still alive. If your living trust is revocable, as almost all are, it gives you great flexibility. You or someone in whom you have confidence manages the property, usually for the benefit of you or your family. Most people name themselves as trustees and find there is no difference between managing the trust and managing their own property. They have the right to buy, sell or give property as before, though the property is in the trust's name rather than in their own.

Advantages

Helps in managing your affairs. A living trust provides a way to care for you and your property in case you become disabled. You'd typically set up a revocable living trust, fund it adequately and name a reliable alternative trustee (often an adult child) to manage it should you become ill. This avoids the delay and red tape of expensive, court-ordered guardianship. At the same time, the trustee can take over any duties you had of providing for other family members.

Of course, living trusts can help even if you're not disabled. For example, if you have a trustee, a living trust can manage your property. Say you rent out condos: your trustee can take over the management, while you receive the income, minus the trustee's fees.

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Protects your privacy. Living trusts maintain your privacy more than wills because there is typically no public record required.

Easy to create and change. For most simple estates, it's not that hard for a lawyer to create a living trust tailored to your estate objectives, and you don't have to go through the formalities required to execute or change wills. Some states require that your living trust be registered with the state, but that's a simple procedure. Most states require no witnesses to execute the living trust or an amendment to it. Just have your lawyer write it and sign your name.

More flexible than wills. Living trusts give you wide flexibility in distributing your property. For example, the trust agreement could say, "At my death, my trustee is to give my car to my son, Cain; my coat to my son, Jacob," and so on. Your instructions can tell the trustee to continue managing assets for the benefit of someone else, distribute them to any beneficiaries you choose or perform some combination of these actions.

Unlike a will, you can use your living trust to make gifts over a period of time. Living trusts can extend long after you die. If you want the trust to benefit your infant grandchildren, for example, you might specify that the trustee make gifts to them as needed until they are fully grown.

Good for far-flung family and assets. Say you want your estate administered by someone who doesn't live in your state (usually a child who's grown up and moved away). A living trust might be better than a will because the trustee probably won't have to meet the residency requirements some state laws impose upon executors.

If you have property in another state, many lawyers recommend setting up a living trust to hold the title to that property. This helps you avoid time-consuming, complicated **ancillary probate** procedures.

Avoids probate. This used to be a main reason for having a living will, but probate is now far less burdensome than it was in most states. And unless you have all of your property in the trust, you would need a will, and your estate would have to go through probate in any event -- though only for the property left out of the trust.

Disadvantages

Title problems. People often neglect to put all of their assets in the name of the trust. And not all items may be easily transferred into a trust. Jewelry can be a problem. So can cars because if you transfer the title to your car into the trust, you may have trouble getting insurance on it because you don't own it anymore.

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Burdensome to maintain. Trusts often spawn administrative chores that need to be attended to from time to time—and it's easy to forget to keep them up to date. For example, revocable trusts may not be automatically revoked or amended on divorce, unlike wills. If you don't amend the trust, your ex could end up being the beneficiary. And running a business that's in a trust can be cumbersome after the owner dies.

Could undermine other legal benefits. If you're in certain specialized situations, you might ask your lawyer whether a living trust is a good idea. It can, if not properly drafted, jeopardize Medicaid qualifications. Depending on the state the property is located in, putting your home in a revocable trust might jeopardize a homestead exemption, might require a transfer fee or might cause your property to be re-evaluated for property tax purposes.

Less protection in the administration process. Because administering trust estates (that is, wrapping them up after death) has fewer formalities, abuses have occurred. In other words, what you may gain in speed and flexibility may be out weighed by what you could lose.

Less protection generally. If you have a will and your estate goes through probate, it is before a court, which has its advantages. In a trust administration, you are not in court with an expedited way for the court to settle disputes or issues of facts regarding status of beneficiaries. If a court is to determine those issues in a trust administration, a separate legal case needs to be filed—which entails a summons, related costs and time delay. In contentious situations, an estate administration is best.

Tax problems. The federal estate tax allows an estate to use a year other than a calendar year as the "taxable year" used in tax deadlines. Trusts don't receive the same flexibility. If you have a large estate and timing is a consideration, it might save you money to pass your assets via will instead of trust. Also, trusts are required to make estimated tax payments, while estates are exempt from this requirement for the first two years. There may be state tax considerations, too. Some states charge income taxes on trusts but not estates. Check your state law for such traps before setting up a living trust.

Cost. It can cost more to draft a living trust than a will. Though there may be some eventual savings in reduced or eliminated probate costs, registration fees and other incidental costs of the trust are incurred up front while the savings generally don't accrue until after death.

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Weighing the Pros and Cons

Living trusts can be a useful, simple and relatively inexpensive way to plan your estate, but they do not magically solve all your problems.

Deciding whether a living trust is right for you depends on the size of your estate, what kinds of assets it contains and what plans you have for yourself and your family. You and your lawyer will have to weigh all the factors and decide if one is right for you.

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