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Frequently Asked Questions

What is a Revocable Living Trust?

A trust is a contract where one (Grantor/Settlor) or two or more persons (Grantors/Settlors) transfers property to a non-person entity for the benefit of themselves, another person(s) or a charitable entity. If the creator, called the Grantor/Settlor, of this agreement sets it up during his/her lifetime, it is called a "LIVING TRUST." If the creator retains the right to dissolve the trust, it is a "REVOCABLE LIVING TRUST."

What are the Advantages of a Revocable Living Trust?

1) AVOIDS PROBATE – this could represent substantial savings for your beneficiaries.

2) AVOIDS COSTLY DELAY – a Living Trust can be administered much faster than the administration of a probate estate.

3) AVOIDS PUBLICITY – Estates, are public records. Anyone interested can see a listing of your assets, debts and who will receive your property. Property held by a Living Trust ***avoids*** publicity. Therefore, property held by a Living Trust is private and the identity of who receives the distributions from a Living Trust is also kept private.

4) AVOIDS THE NEED FOR GUARDIANSHIP – One major advantage of a Living Trust is that if the Grantor(s) becomes incapacitated/disabled and can no longer handle his/her own affairs, the Living Trust will have named a "Successor Trustee" who will manage the Living Trust for the benefit of the Grantor(s). A Guardianship or Conservatorship through Probate will never be needed for the assets that are held in a Living trust.

Does a Living Trust make sense for a single person?

Yes, a Living trust is just as effective for a single person as it is for a married couple. In fact, two single persons, i.e., two siblings, can set up a Living Trust together. A Living Trust may be more important for singles than for married individuals. At the death or disability of the first spouse, the Living Trust becomes a more important vehicle to protect the surviving member of the marriage.

Does the Trust Company have to be involved?

No, the law does not require a corporate trustee (bank or Trust Company) to be involved. However, you may decide to have a corporate trustee handle the trust investments and administration to take advantage of a Trust Company's expertise and experience. A Trust Company charges a fee that is typically a percentage of the value of the assets the Trust Company is administering. It is usually quoted as an annual fee yet charged quarterly. In certain circumstances, fees may be charged monthly, semi-annually or annually.

How is a Trust Company different from a Bank Trust Department?

A Trust Company operates under a trust banking charter and has its own corporate structure. A trust department of a bank operates under the bank's charter with trust powers and is considered a part of the bank's corporate entity.

Who can manage a Living Trust?

You, as Grantor, may name yourself as Trustee, or you can name other individuals or a Trust Company to be the Trustee. The attorney who prepares the Living Trust will provide for a succession of Trustees to ensure there will be a Trustee in place no matter what may happen to the Grantor. These Trustees are known as either Co-Trustees or Successor Trustees.

An attorney says I can merely put a Trust Plan in my Will. Is that a good idea?
A Trust Plan can be set up in your Will. This is call a "Testamentary Trust." There is one big disadvantage of a Testamentary Trust. This is that all assets have to pass through probate before the remaining assets fund the Testamentary trust. Thus, you are subject to the cost of Probate and your estate becomes part of the public record, thereby eliminating any privacy for you or your heirs.

Can I change my Living Trust?
Yes, that is the essence of a Revocable Living Trust. You are allowed, by the terms of the Living Trust, to make amendments in order to change provisions during your lifetime and while you are mentally capable.

Must I transfer all of my assets into the Living trust?
If you want to avoid Probate and have the full protection for your assets of the Living Trust working to your full advantage, then the answer is … YES. Assets not titled in the name of the Living Trust are not considered assets of the Living Trust, and may be subject to probate.

Is it necessary to put personal property into the Living Trust?
This point is debatable. Some say not to put in personal property such as the furniture and furnishings of your home, automobiles, motorcycles, boats, and other personal items. Others say it may be wise to place valuables such as jewelry, coin or stamp collections or other collections that hold monetary value, even though it may increase administrative fees. The best answer to this question is to talk with a corporate Trustee, and your attorney to determine what would make sense for ease of administration and protection of the asset in question.

Should I put my personal residence in my Living Trust?
If you are a Florida resident and own homestead property in Florida jointly with your spouse, you may not want to put the home in your Living Trust. If you become widowed, it is at that time that you most likely would put your homestead property in trust. There is much debate on this topic. Talk to your attorney, Trustee and accountant to make sure you fully understand the implications and do what is best for you and your circumstances. Do not assume that what your neighbor did is what you should do even though it appears that you have similar circumstances. Investigate and make the right decision for yourself and your family.

Is a Living Trust known by other names?
Yes, it is, and that can be quite confusing. Here are some of the names you may see, hear or read about:

- The A-B Trust
- The Loving Trust
- The Marital Deduction Trust
- The Grantor Trust
- The Inter Vivos trust (Inter Vivos means during your life, or literally translated in Latin means "Living Trust")
- The Caring trust
- The Family Living trust
- The Revocable Living Trust
- The Grantor Revocable Living Trust

- The Revocable Trust

All of these Trusts and Living Trusts with either fancy trademarks or names are used to market the Living Trust concept or special tax savings provisions.

Does the Living Trust prevent you from borrowing against assets in the trust?
No, although it can complicate the administration of the Living Trust and lenders typically want to see a copy of the Living Trust document and possibly a list of the Living Trust assets. The Living Trust does not restrict your rights to borrow against the assets of the Living Trust unless you specifically put language in the Living Trust with such limitation.

Does the Living Trust protect me against my creditors?
The Living Trust does not act as a shield to protect you from creditors. Also, you cannot rely on the Living Trust to avoid nursing home expenses.

What is the difference between a Revocable Trust and an Irrevocable Trust?
A Living Trust can be either revocable or irrevocable. Revocable means the Grantor/Settlor can cancel or change its terms during the Grantor/Settlors lifetime. Irrevocable means it cannot be changed. (There is one caveat to the Irrevocable Trust, which is, that, in an Irrevocable Trust, the Grantor can retain the right to change the Trustee(s) of the Irrevocable Trust).

Why doesn't everyone have a Living Trust?
The majority of people do not know about Living Trusts. Most people do not plan for the future. Apparently, many feel if they do not plan for issues arising upon death, they will not die. In addition, there are some types of assets which need not or cannot be held in a Living Trust. Examples of these include: IRA's, 401(k)s, 403(b)'s, and Life Insurance not owned by the insured person.

Must a separate tax return be filed for your Living Trust?
You do not have to file a separate tax return for your Living Trust so long as you retain your Social Security Number as the Tax Identification Number for your Living Trust. When you name a Trust Company as Trustee, Co-Trustee or Successor Trustee of an Irrevocable Trust, the Trust Company files a tax return for the Trust and passes along the information (income, principal, capital gains, etc.) to the beneficiary or his/her accountant, so they can prepare the beneficiary's personal tax return.

Why is it important to transfer assets into the Living Trust?
There are 2 main reasons:
1) To avoid Probate, and
2) To protect you, the Grantor.

Only those assets that are registered in the name of the Living Trust will avoid probate. Making a list of your assets you want to be in the Living Trust is not enough; you must title your assets into the name of your Living Trust. If the assets are not titled into the name of the Living Trust and you become mentally or physically incapacitated, a Guardianship will need to be established. A Guardianship is both cumbersome and expensive. You should avoid a Guardianship, if possible. Having a Living Trust funded with your assets is a simple way to avoid a Guardianship for your assets.

What right does a surviving spouse have in the Living Trust assets?
If the surviving spouse becomes the Successor Trustee, he or she will have the right to sell, buy or transfer any of the assets. The surviving spouse is usually the beneficiary of the Trust assets and, therefore, has the right to all income, and to use all or portions of the Trust principal. To achieve maximum federal estate tax benefits, a portion of the principal may be limited to only what the spouse actually needs to live for normal living expenses.

If I have a Living Trust, is a Will necessary?
YES! A "Pour-Over" Will is drafted along with the Trust and acts as a safety net. If you forget to put your assets into the Trust, then the Will would catch those assets at the time of your death and transfer them into the Trust. Keep in mind: any assets not in the name of the Trust, pass under the terms of your Will and are subject to Probate. See the next Question…

Does my Pour-Over Will avoid probate?
No, the Pour-Over Will does not avoid Probate. All the assets that you did not put into your Living Trust will by caught by your Pour-Over Will and pass through Probate. Once again, Probate is expensive, time consuming and open to the public. The majority of people want to avoid Probate…though there may be a few situations that a portion of your estate should go through Probate; however, that is often the exception rather than the rule.

What is a Designation of Health Care Surrogate document?
This document identifies the person or persons you have chosen to make health care decisions for you if you become unable to make those decisions for yourself, and authorizes your physician and other health care providers to disclose to your surrogate sufficient information about your condition and treatment for your surrogate to make a meaningful and informed decision on your behalf.

If I have a Designation of Health Care Surrogate document, when does it become effective?
Your Designation of Health Care Surrogate document is effective immediately and may be revoked at any time.

What is a Living Will Declaration and when does it become effective?
Your Living Will Declaration (or "Living Will") will not be given effect as long as you can communicate your wishes to your physician and other health care providers at the time of your treatment. If you lose the ability to communicate your wishes, your Living Will Declaration still will not be given effect unless your attending physician and a consulting physician both agree that your condition is such that it would be appropriate to invoke your Living Will as the final expression of your wishes. Your Living Will may be modified or revoked at any time as long as you have capacity. Please call me if you decide to modify or revoke your Living Will.

What are Non-Probate assets?
Bank accounts payable on death (POD) to a named beneficiary, brokerage accounts transferrable on death (TOD) to a named beneficiary, life insurance payable on death to a named beneficiary, and property (real and personal) held as joint tenants with right of survivorship (JTWROS), are not subject to Probate and will pass by operation of contract or by operation of law to the person or persons you have named as beneficiaries or to your joint tenant outside the provisions of your Will. The person receiving those assets is not required by law to share those assets with the other beneficiaries of your estate and may not be required to use those assets to pay the claims against your estate. If that outcome would be inconsistent with your plan for the disposition of your estate, please let your attorney know so that you may address those issues.

When can I change my Will and how do I change it?

Your Will may be changed at any time by executing a codicil to the Will or revoked by executing a new Will. Your Will may not be changed by marking through words or sentences or making handwritten changes on the original. Changes to your Will must be made with the same formalities that were required when you made your Will. If you need to make changes to your Will, please let your attorney know so that you may address those changes.

Keep your signed original Will in a safe place and tell the person you have named as your Personal Representative where it is. Note the location of the original on any copies. The person who has custody of the signed original is required to file it with the clerk of court in the county where you are domiciled at the time of your death. If the signed original cannot be located, and it was last seen in your possession, it will be presumed that you revoked it by destruction, unless there is sufficient evidence to rebut the presumption.

What is a Durable Power of Attorney?

A Durable Power of Attorney is an important legal document by which you authorize another person (your "attorney-in-fact") to act for you without any court supervision or approval. The person you appoint as your attorney-in-fact should be someone you trust completely.

What powers does my attorney-in-fact have?

Although your attorney-in-fact will have a fiduciary duty to act in your best interests, *that doesn't always happen*. Your attorney-in-fact will have the power to withdraw money from your bank accounts and brokerage accounts, mortgage and transfer your real and personal property, and do other things which could be devastating financially.

When will my attorney-in-fact be able to exercise their powers?

The powers granted to your attorney-in-fact will become effective the moment you sign your Durable Power of Attorney and will continue to exist, even if you become incapacitated, for your entire lifetime, unless you revoke or terminate the Durable Power of Attorney in a written instrument executed with the same formalities as the original instrument. A photocopy of your Durable Power of Attorney will have the same force and effect as the original. You will have the right to revoke or terminate your Durable Power of Attorney at any time as long as you have legal capacity. The powers granted to your attorney-in-fact terminate automatically upon your death and cannot be used by your attorney-in-fact to avoid Probate, after your death.

What is Long Term Care?

Long term care may include necessary services on a continuous basis to help a person maintain his or her level of functioning following an illness or injury. Some of these necessary services may include:

- assistance with daily living activities

- home health care

- adult day care

- respite care

- nursing home care

Will Medicare, an HMO or a Medicare Supplement Pay for Long Term Care Expenses?

Long term care expenses are generally not paid for by Medicare, a supplement or HMOs. Medicare is a health insurance program run by the federal government to pay for hospital or other medical services (physician visits, hospice, etc.) for aged and disabled persons. Medicare will cover some of the cost of skilled care in approved nursing homes or, home health care for a brief period after an acute care stay in a hospital. A Medicare supplement generally pays co-payments, deductibles, and services partially covered by Medicare. Medicaid will pay for most long term care costs.

Should I Consider Buying Tong Term Care Insurance?

Yes. If you are medically approved and can afford a long term care policy it can:

- Provide more choices in how and where you will be cared for.

- Preserve assets for a spouse or child's inheritance.

- Empower you to maintain your dignity and independence.

- Shift the risk of payment from you to the insurance company.

Please be sure to carefully research your options. You can do this by contacting the National Association of Insurance Commissioners at 816-842-3600 or go to www.naic.com for a copy of the publication "A Shopper's Guide to Long Term Care Insurance." http://www.naic.org/documents/prod_serv_consumer_ltc_lp.pdf

Do I Have To Become Impoverished To Be Eligible For Medicaid or SSI?

Without planning, it may be necessary to spend down your or your spouses resources to the maximum level allowed by law in order to qualify for certain benefits. We counsel clients on how to legally preserve the maximum amount of all assets and qualify for government benefits when private health insurance, Medicare/HMOs or long term care insurance no longer provide coverage.

How Do I Find An Appropriate Facility For My Loved One?

The Agency for Health Care Administration publishes health care data and statistics to assist consumers in evaluating the quality of nursing home care in Florida. You can contact them at 1-888-419-3456 or www.floridahealthstat.com