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## LIVING TRUSTS Our Own Views

### General

Q: Just what is a “trust”?

A: A “trust” is a technique to control the management and use of wealth.

The person with the wealth or asset (the donor) transfers it to a trustworthy third party (the trustee), to be managed and used for the beneficiary, but only as the donor directs. A trust can be created during lifetime, or at death.

Every trust has a donor, a trustee, and one or more beneficiaries. But one person may play more than one role. For example, many donors also are their own trustees.

Q: What are the unique features of a “Living Trust”?

A: A Living Trust is any trust:

- created during the donor’s lifetime
- for his or her exclusive benefit
- which he or she may change or revoke while living
- which can continue after death for the benefit of others

Q: With a Living Trust, what happens to the trust assets when the donor dies?

A: They go as the donor designates (outright or to continue in trust) - as with a Will. The Living Trust is a different and often simpler way to the same end.

Q: If I create a Living Trust and change my mind, is it difficult to put things back as they were?

A: No. Whenever you wish, the assets can be put back into your name quite easily and quickly.

Q: What are the tax consequences of Living Trusts?

A: Contrary to the propaganda of many Living Trust promoters, there are no significant income, gift or estate tax advantages to Living Trusts.

### Avoiding Probate

Q: Why has so much interest developed in Living Trusts?

A: In order to reduce the expense, delay and publicity of the probate process.

Q: What is “probate”?

A: “Probate” is a system for:

- verifying that a Will is valid
- appointing an executor to carry out its terms, and
- monitoring the executor’s conduct

Q: Does my Will control all of my wealth?

A: No. Your Will controls only those assets in your name alone - and not those held in a Living Trust, or in joint tenancy, or payable to another person on your death (such as life insurance or an IRA).

Q: If I am my own trustee, how will my Living Trust be administered after my death?

A: By whomever you designate to succeed you as trustee.

Q: If I have a Living Trust, will I avoid probate?

A: Maybe yes, maybe only partially. In order to totally avoid probate with a Living Trust during your lifetime, you must transfer substantially all of your wealth to the trustee of your Living Trust. This is called “funding” the trust.

But many donors hold back some of their assets - intentionally or through oversight. Then only the Living Trust assets avoid probate, and those in the donor's own name require probate.

Q: Then through probate, where would my overlooked assets go?

A: As your Will directs. That's why you should have a Will even if you have a Living Trust. The Will would probably direct that these non-trust assets be added to the Living Trust.

### Who Will be Trustee?

Q: Under a Living Trust, can I be both donor and beneficiary, and also be trustee?

A: Yes - you can play all three roles - at least at the start. But most people also name a successor trustee to provide for continuity should they become disabled or wish to resign.

Q: What happens if I am my own trustee and later become disabled?

A: You might name certain individuals (your children, for example), who can decide if you are no longer able to manage your wealth. They then could substitute another trustee in your place.

Q: Is there any particular danger in creating a Living Trust?

A: In creating a Living Trust, or any trust, people often overlook the importance of carefully choosing trustees. If a trustee is inflexible, inefficient, exercises poor judgment, or is negligent or dishonest, you and your beneficiaries might suffer great financial loss. But these are words of caution - not an argument against using trusts.

Q: If I do not act as my own trustee, what are my options?

A: Many. For example, you may appoint a family member, friend, advisor, bank, or trust company (or a combination of them) as trustee. But first you would need to learn the advantages and disadvantages of each.

### Some Overlooked Advantages

Q: In addition to eliminating the need for probate, are there other advantages to Living Trusts?

A: Yes - and three very important ones in particular! Living Trusts can also:

- better protect you if you become disabled
- make it more difficult for anyone to apply undue influence over you, and
- allow you to do much more during your lifetime to simplify the administration of your estate after your death

Q: How can a Living Trust help me if I become disabled?

A: If you have no Living Trust and become disabled, court proceedings for protecting and managing your assets can be slow and expensive. But, if, for example, you had a Living Trust, with a child as the initial trustee (or as your successor), that child could continue to use those assets for you, even during your disability, and without court approval or supervision.

Q: How can a Living Trust protect me from “undue influence”?

A: A disabled person is usually no match for the “suggestions” of some greedy outsider, or even possibly a “friend” or relative.

But, if, for example, you had created a Living Trust with a child as trustee, and then became disabled, that child could manage your assets and help to protect you from those who might otherwise take advantage.

### Legal Fees

Q: What are the cost differences between Wills and Living Trusts?

A: In the short run (now and until the trust is created and funded) fees may be higher because more work is involved. In the long run (from the time the trust is created and funded, through death and the related estate administration) total fees will likely be much less.

### Is a Living Trust for You?

Q: Should the size of my estate be a factor in deciding whether or not I should have a Living Trust?

A: Not really. Whether your estate is \$250,000 or \$25,000,000, it still needs planning and protection. A Living Trust should always be one of the estate planning tools you consider.

We believe that a Living Trust might immediately benefit anyone who:

has no immediate family  
or  
is threatened by health problems  
or  
has ultimate beneficiaries  
prone to disagreement  
or  
owns real estate  
in more than one state  
or  
seeks relief from the  
burdens of financial management  
or  
wishes more privacy about their assets  
and for their beneficiaries after death