

## **Living Trusts: Sometimes Needed, Often Not**

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*(See Corrections & Amplifications item [below](#).)*

It seems like a good way to help your heirs: eliminate thousands of dollars in legal fees that they could face when handling your property after you die.

That's the heart of a sales pitch for a common estate-planning tool called a living trust.

In certain circumstances, living trusts do make sense. A prime example: you live or own property in a state such as California or Florida where handling even a simple estate can take a year or more and rack up big legal fees.

But for many people, especially those without substantial savings, living trusts can be a waste of money and time. Worse still, scam artists have been using them as a way to get their foot in the door of unsuspecting seniors.

A living trust is a legal entity created to own your assets -- investments, homes, even cars -- while you're alive and then distribute them according to your instructions after your death. With a living trust, you typically can avoid "probate" -- the process within the court system of distributing your estate after you die. That's because once property is in a trust, it's technically no longer part of the estate subject to probate laws.

Most living trusts can be terminated or adjusted at any time while you're alive and, as a result, are sometimes called by their proper name -- revocable living trusts. At least one individual must be named to be a successor trustee, with oversight of the assets after you die.

Setting up a living trust typically involves meeting with an attorney to review your assets and should always be done in conjunction with a complete review of your estate plan. The costs can vary from under \$1,000 to over \$5,000 depending on the attorney and the complexity of your estate.

### **Living Trusts vs. Wills**

That said, a simple will that spells out how you want to distribute your estate is all that most people need. Average probate time is just six to nine months, according to the

American Bar Association. For many people, probate won't involve hefty legal fees -- and may not even require an attorney at all.

Unless there are tax issues or the will is contested, a living trust usually won't significantly speed up the process, attorneys say. Like an executor named in a will, a successor trustee of a living trust is responsible for ensuring that assets are accounted for and distributed properly and that creditors are paid -- all of which takes time.

In addition, many states have separate rules for small estates that can shorten time spent in probate, sometimes to just a few weeks. In Texas, it's possible to avoid probate entirely simply by having certain language in your will. Plus, there are other ways to avoid probate in some circumstances, such as holding property in joint ownership with the person you want to inherit it.

The total cost of probate will depend on a combination of state or other local probate fees (which are often based on a percentage of assets in your estate) plus attorneys costs, which typically get billed by the hour.

A living trust is "very popular where probate is a nuisance," says **Philip Bouklas**, a New York attorney who at times recommends the step for clients who have property in Florida. "In New York, personally, I don't think probate is all that bad."

Mr. Bouklas does recommend a living trust to clients with disabled children, because it may head off a situation in which a court needs to appoint a guardian. Other attorneys recommend living trusts for older clients worried about becoming incapacitated and unable to manage their own affairs; with a living trust, the trustee acts on their behalf.

### **You Must Follow Through**

Creating a living trust, however, isn't the end of the process, and in fact, it can be the simplest part of the task. Once a trust is established, assets have to be shifted to the trust, a process known as "funding" the trust. That involves lots of paperwork. Bank and brokerage accounts need to be retitled and homes need to be deeded to the trust. (For tax reasons, retirement accounts generally shouldn't be part of the trust.)

Ronald and Kathleen Kabitzke of West Bend, Wis., found out the hard way about not funding a trust after Kathleen's parents were killed by a drunk driver in 2005.

Her parents had paid \$750 for a living trust, but never transferred their assets into it. It took 14 months and more than \$10,000 in legal fees before the first distribution out of a nearly seven-figure estate was paid out, Mr. Kabitzke says.

"The [probate] experience from hell that you always hear about? We experienced it," he says.

As an extra bit of insurance, living trusts should be accompanied by a "pour over" will, which essentially says that if there are any investments or property you forgot about, they should be included in the trust. "There's always going to be some stray asset" that doesn't make it into the trust, says Ruthann Lacey, a Tucker, Ga., estate-planning attorney.

While living trusts can be helpful, there are many things they can't do: They generally don't add any protection against inheritance taxes, and they don't shelter assets from nursing-home costs or other creditors. In addition, just like a will, a living trust usually can be contested, in which case the estate can still end up stuck in court.

## **Living-Trust Scams**

Another reason to tread cautiously is that some scammers sell trusts at inflated prices and then use the information they collect about people to push other products.

In May, North Carolina's attorney general, Roy Cooper, sued for deceptive trade practices and unauthorized practicing of the law a company that used a living-trust pitch as an opening to sell high-priced, "inappropriate" annuities to seniors.

The company sent mailings to consumers warning that probate costs and estate taxes would place a "heavy burden on your heirs and loved ones." The seniors were told to return preaddressed response cards in order to get a report on how they could "avoid probate and estate taxes."

Instead, those who responded were called by insurance agents proposing to visit people's homes. In the agents' presentations, the costs of probate were exaggerated, the suit said.

The company sold living trusts for \$1,995 -- which the state alleges is more than would have been due if most of the customers' estates ended up in probate. Of that total, \$300 went to an attorney who generated cookie-cutter trusts.

The agents -- who were not lawyers -- would collect personal information that would be used to help hone their annuities sale pitch.

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