Do You Need a Living Trust?

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What is a trust?

There are many types of trusts. A revocable living trust is a legal document somewhat similar to, but separate from, a Will. This type of trust specifies how assets should be distributed at your death and names a successor trustee to be in charge of the trust administration after your death. The trust document controls any assets that are held in the name of the trust, as well as assets on which the trust is a designated beneficiary.

What are some of the benefits of having a trust?

- **Avoid Probate Court**

  Any assets owned by a trust or which pass to the trust by beneficiary designation are non-probate assets.

  By avoiding probate court, you achieve greater **privacy**. Specifically, your next of kin do not need to be notified of the trust contents, and the trust inventory, accounting, and beneficiary distributions are not placed on a probate court website.

  Avoiding probate court can also result in **reduced administration costs**. There are no court costs for trust administration (though probate court costs are minimal – usually just $260). Typically, attorneys need to spend less time assisting with trust administration, and thus attorney fees for trust administration may be somewhat lower than for probate estate administration, especially in cases where attorneys charge a percentage fee for probate estates.

- **Distribute Assets over Time**

  Beneficiaries who inherit through a simple Will or through direct beneficiary designation will have access to their entire inheritance soon after your death or upon reaching adulthood. A trust allows you to direct that distributions be spaced out over a longer period of time. This is particularly useful for young children, who may benefit from receiving their inheritance in smaller portions over time, for instance in thirds at ages 22, 26, and 30. This is also helpful in the case of a beneficiary who struggles with mental health or substance abuse. The Trustee can make smaller distributions according to a schedule, or can make discretionary distributions as they deem appropriate. For a beneficiary on SSI or Medicaid, a wholly-discretionary or special needs trust can be an important planning tool to maintain eligibility for benefits.

- **Real Estate**

  Some individuals have a house in Ohio and a condo or timeshare in another state, such as Florida. When all owners pass away, there would need to be probate administration in both Ohio and Florida, which can result in significant legal fees. A trust can streamline the transfer of real estate and avoid probate in both states. In this example, a Florida attorney and title company would still need to be hired to prepare Florida deeds and/or affidavits, but a Florida probate proceeding would not be necessary.

- **Handle Complex Distribution Schemes and Specify Contingencies**

  For individuals with just a few beneficiaries who will inherit equally, beneficiary designations on various assets can be an effective way to reduce probate administration of your estate. Beneficiary designations do not work as well if there are many beneficiaries who will each

need to file separate claim paperwork for every asset on which they are named. Also, complex distribution schemes are more difficult to accomplish through beneficiary designations (for instance "$100,000 to this individual, but only if my assets exceed $500,000" or "25% to my sister Jane, but if she passes away before me, her share should be split equally between her children and her husband"). In such cases, a trust may be the most effective way of reducing probate administration of your estate and ensuring that your wishes will be met under any number of circumstances.

- **Creditor Protection**

  A trust can also provide some protection of an inheritance from a beneficiary's creditors with use of a spendthrift clause.

What are some reasons not to have a trust?

- **Other Ways to Avoid Probate**

  Many individuals, especially those with just a few beneficiaries, can effectively reduce the need for probate administration by designating beneficiaries on most assets. In such cases, probate administration may only be necessary to transfer a house and car. For individuals with just one primary beneficiary, even the house and car can be designated to transfer on death to that individual.

- **Cost**

  Trusts are more expensive to prepare than Wills, even though they have the potential to provide cost-savings in the future.

- **Timeline**

  Probate Court's filing deadlines can help an executor stay on track and keep the process moving forward. There is no formal oversight for trust administration, and sometimes the process can take a longer time to complete if the trustee is not motivated to move quickly, for instance with putting a house on the market.

- **Oversight**

  Probate Court oversees the administration of estates, and the process includes built-in opportunities for a beneficiary to raise issues without having to file a separate claim in court. This can sometimes result in more efficient dispute resolution.

- **Additional Work / Higher Level of Complication**

  After signing a trust, beneficiary designations or ownership of most assets must be changed to effectively avoid probate. Thus, there could be significant additional legwork to reduce probate administration of your estate after the trust has been signed. Further, trusts are longer documents than Wills with additional supporting documents, and some clients find the details confusing or overwhelming.

- **No Tax Benefit**

  For most clients, there is not a tax benefit to using a trust versus beneficiary designations and a Will to distribute assets after death.

What about Irrevocable Trusts?

Typically, an irrevocable trust is prepared with a specific purpose, such as advance Medicaid planning. See our article titled "What Types of Medicaid Planning Are Available?"