

Living Trusts: How to Avoid a Deceptive Deal

Even if you have a modest estate, a “living trust” can be an important estate planning tool to give you control over your assets while you are alive and allow you to transfer your assets to your heirs without going through the time and expense of probate. But there are many misconceptions about living trusts, and AARP (American Association of Retired Persons) reports since the first of the year, there has been an upsurge of deceptive telemarketing calls, mass mailings and newspaper ads designed to lure consumers into paying a lot of money for something they may not need.

WHAT IS A LIVING TRUST?

A living trust is simply a trust established during your lifetime. Under a living trust agreement, you select a trustee (often yourself) to manage your property for your benefit during your lifetime pursuant to the terms of a trust agreement.

You have full control over these assets because you retain the right to amend or revoke this trust agreement at any time. Upon your death, the property held by the trustee passes to the beneficiaries you designate in your trust agreement without passing through the probate court, thereby avoiding the delays, cost and public nature of probate.

THE ADVANTAGES OF A LIVING TRUST

Most importantly, assets funded into the trust avoid probate and because assets distributed through a trust pass outside of the probate court, there is no public record of the distributions. Living trusts also can reduce estate taxes while providing for the surviving spouse. In addition, in a living trust, you determine when income or principal will be distributed to the beneficiaries. You may set the ages and purposes (e.g., health, education, support) for which a trustee may distribute income or principal to a beneficiary. Moreover, a living trust can provide that assets pass to your children upon the death of your surviving spouse, making a living trust a particularly useful estate planning tool in a remarriage situation. Finally, living trusts can protect assets from a beneficiary’s creditors.

THE DISADVANTAGES OF A LIVING TRUST

There are several disadvantages, however, to living trusts. First, there is no one to supervise an inexperienced trustee. If he or she makes a mistake, no one may ever know about it. Second, to avoid probate, you must take the steps necessary to transfer your assets into your trust or change the beneficiary designations. It takes times to process the paperwork and expense to draft the trust agreement properly. Third, the cost to draft a living trust is more than a simple will.

FRAUD ON THE ELDERLY

Companies that churn out “standard” living trusts sell their services in seminars, by direct mail, and telemarketing. Without any concern for your overall estate plan, these companies often try to sell you a living trust in a “one-size-fits-all” package. This can have a detrimental affect on your estate plan and may result in the transfer of property to the wrong heirs, while costing you a great deal of money in preparing the living trust agreement. The goal of these companies may very well be to steal your identity or to gather other information about you to use for other purposes.

Deceptive “living trust” companies can be spotted in a number of ways:

1. They often sell living trusts door-to-door or through telemarketers, without giving you any way to check the credentials of the sales person or company.
2. Watch out for “sound alike” names confusing their services with legitimate non-profit organizations like AARP.
3. Be wary of companies trying to sell you self-help kits, which require that you transfer your assets without explaining the proper way to do so and offering no supervision.
4. They may improperly tell you that without this device, all of your assets will be eaten up in an expensive probate proceeding.
5. They never have you meet with a licensed attorney.

In all of these cases, high-pressure tactics are used. Don’t make any decisions “under the gun” and be sure to consult with licensed estate planning professionals.

MISCONCEPTIONS ABOUT LIVING TRUSTS

There are several misconceptions about living trusts. Some think that living trusts are the best way to save estate taxes, yet a living trust is only one technique that helps people with large estates save taxes. In addition, a living trust does not prevent your creditors from reaching your assets during your lifetime.

Another common misconception is that transferring your assets to a living trust will automatically allow you to qualify for Medicaid. It does not. Furthermore, a living trust does not prevent a beneficiary or heir from challenging the validity of your living trust by claiming that you were incompetent when it was written. Finally, a living trust will not decrease your income taxes and, after your death, the trustee must file a separate tax return each year the trust is in existence. These things may add to the expense of the living trust.

FINAL WORDS OF ADVICE

A living trust should be created only after a thorough review of your tax, estate, and personal goals. You need to talk with a qualified estate planning attorney, and perhaps an accountant or financial advisor to make an informed decision on whether to create a living trust. A living trust does not

alleviate the need for a Will. A Will is still needed since any assets not in the trust will be distributed according to your wishes in your Will. Be wary of advice on the Internet, “do-it-yourself” books and forms on living trusts. It is difficult to evaluate how good and trustworthy these sources are. Remember: After you have died, you can not take it with you and you can not change your mind.

NOTES

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