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COMMONLY ASKED QUESTIONS ABOUT LIVING TRUSTS

BY
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1. What is a revocable living trust?

A revocable trust is a contract entered into by you to establish separate entity, the trust, which will own your assets. You retain control of those assets and have the right to change it, amend it or revoke it at any time.

2. How does a living trust help me to avoid probate?

Once you have created your living trust, you can avoid probate on all of the assets that you transfer into the trust. By transferring your assets into the trust, your assets are then owned by the trust and upon your death, the trust operates to provide for the distribution of those assets to your beneficiaries pursuant to your instructions.

3. How are a will and a trust different?

A will guarantees probate. It must be admitted into court and approved by a judge before assets can be transferred. A living trust avoids probate and provides for a quick and inexpensive transfer of assets upon death.

4. Does a living trust make sense for a single person?

Yes. A living trust avoids probate and guardianship and provides for a quick and private transfer of your assets to your beneficiaries.

5. Is a living trust known by any other names?

Living trusts are also known as revocable trusts, intervivos trusts, grantors trusts, and “loving” trusts. Although there may be some variation from one trust to the next, they are essentially the same.

6. What is an irrevocable trust?

An irrevocable trust is a trust where you do not retain the right to amend or revoke it. Once it is created, it is permanent and cannot be changed. Living trusts are revocable.

7. Will having a living trust affect my social security benefits?

Social Security benefits are totally unaffected by a living trust.

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8. Does a bank or trust company have to be involved?

No. If you choose, you can name a bank or trust company to be trustee of your trust and to manage your financial affairs. Most people choose to use individual Trustees. The person who creates the trust is, almost always, named as the first trustee. They then designate successor trustees to handle their affairs if they become disabled or die.

9. If I set up a trust, is a Last Will also required?

A will is not required, but is highly recommended. Pour over wills may be helpful. The purpose of the pour over will is to capture any assets inadvertently omitted from the living trust and transfer them into the trust. However, the use of the will to capture such assets requires a probate proceeding.

10. What is a Pour Over Will?

It is sometimes impossible to include everything you own in your trust by deed, account or name. Unlike the normal Last Will and Testament, the Pour Over Will simply directs your named Executor to “pour over” any asset which you failed to include in your trust, into your trust, for distribution under the terms of your living trust. You may think of the Pour Over Will as a safeguard for any assets inadvertently left out of your trust.

11. Does my will avoid probate?

No. Living trusts avoid probate; wills *do not*.

12. What is a Durable Power of Attorney for Health Care?

A Durable Power of Attorney allows a person of your choice to make medical decisions in the event you are physically unable to make decisions or give consent to treatment yourself. The Durable Power of Attorney for Health Care also allows your designated agent to withhold medical treatment in certain circumstances.

13. What should be inside my living trust?

To receive the full benefit of your living trust, every asset should be placed into your living trust with a few minor exceptions. IRA accounts must be owned by an individual and should not be changed over to the trust, however, the death beneficiary should be changed so the spouse is primary and the trust is secondary death beneficiary. Life insurance policies do not need to have the ownership changed, but the death beneficiary should be changed to the trust.

14. Should my life insurance policies be placed inside the living trust?

No. however, your living trust should be the beneficiary of your life insurance policies. By naming your living trust as the beneficiary of your life insurance policies, you are able to consolidate all of your wishes into one comprehensive plan.

15. Should I put IRAs and Keoghs inside the living trust?

No. IRA and Keogh accounts must be owned by the individual. However, the death beneficiary should be changed so the spouse is primary and the trust is the

secondary death beneficiary. The living trust should not be the owner of your IRAs and Keoghs, as this disqualifies them from their tax favored status.

16. Do I need to change ownership of my stocks and bonds?

Yes. Ownership of your stocks and bonds should be changed into the name of your trust in order to avoid probate.

17. Do I put recreational vehicles and boats into the living trust?

Yes. It is essential that these items go into the living trust in order to avoid probate.

18. Will a living trust reduce estate taxes?

A living trust may reduce estate taxes depending upon the size of your estate. Under current law, estate under \$5.324 million can be passed to your heirs without any federal estate tax being payable. Each individual has \$5.324 million federal estate tax equivalent exemption. If you have an AB trust (the B trust being a bypass trust), then you preserve the federal estate tax equivalent exemptions of both spouses and an estate valued up to \$10.6+ million can be passed to your heirs before any federal estate must be paid.

19. Does a trust make sense for an estate less than \$1,000,000?

Yes, the \$1,000,000 amount has nothing to do with probate. However, in most instances, smaller estates are still required to go through probate unless the estate is held in a living trust.

20. Are the assets in my living trust available to pay for nursing home care?

Since the trust is totally revocable, assets in the trust are available to pay for nursing home expenses. Some people mistakenly believe that if they transfer their assets into the living trust and then enter a nursing home and apply for medical assistance, that the assets in the living trust will be protected. This is definitely not the case. Medical assistance rules are complex. However, we will be happy to consult with you on an individual basis with respect to additional options which are available to you to protect your assets from Medicare.

21. How is distribution upon death different if I have a living trust rather than a will?

When assets are not in a living trust, they are distributed according to your Will through the probate process. Once probate is complete, your assets will be immediately distributed outright. With a living trust, the successor trustee steps in and has immediate power to distribute the assets as set out in your living trust. However, with a living trust, the assets may remain in the trust to be distributed later if the trust so provides, since the trust is legal entity and “lives on” after a persons death.

22. Can I change or revoke my living trust?

Yes. The creators of a living trust reserve the right to change or revoke it at any time.

23. Will a Trust avoid all taxes?

No. Simply placing property in a Trust does not place it out of reach of the tax collectors.

24. Does a Trust avoid litigation?

Unfortunately, living trusts have not avoided litigation similar to will contest litigation, as some beneficiaries are beginning to file litigation against the trust, attacking either the funding of the trust or the terms of the trust. In addition, the trust instrument may also be attacked based upon the incompetency of the grantor or undue influence exerted against the grantor.

25. Does a trust protect trust assets from the grantor's creditors while the grantor is living?

Any beneficiary interest reserved to the grantor of a trust may be reached by its creditors. If the grantor reserves to himself or herself the power of revocation, any creditor of the grantor may, by means of a lawsuit, force the revocation of the trust. (Ohio Rev. Code 1335.01) A spendthrift clause does not prevent this in Ohio and most other states.