

Your Estate: Do You Need A Trust?

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Many people believe that it is best to establish a revocable trust, also known as a living trust, in order to simplify their estate

upon their passing. Although trusts can be extremely useful when used appropriately, establishing and funding a trust can be an expensive and time-consuming process. In addition, most estate plans do not require a trust for stated goals to be met. In order to determine whether a trust is right for you, it is first necessary to understand the difference between a will and a trust.

What a will does

Both wills and trusts are devices that you can use to provide for the distribution of your estate upon your death. A will gives instructions to the Personal Representative of your estate as to the distribution of the assets in your probate estate. Your probate estate consists of those assets that, upon your passing, are held in your name alone and do not have a designated beneficiary. In order for a will to “speak,” probate must be opened. Somewhat simplified, probate is a state court proceeding in which your will is proven, your debts are paid and your remaining property is transferred to your beneficiaries as directed in your will. The negative aspects associated with probate are (1) expense - approximately 3-4% of

the value of the probate assets; (b) time - at least one year to complete, although the process may span several years; and (c) burden on family members - generally requires substantial administrative work by your family members.

What a trust does

A revocable trust is a written declaration in which you state that you are transferring your property into a trust for the benefit of yourself during your lifetime and for the benefit of your beneficiaries after you have passed away. Since the trust is revocable, you would have the power to change, amend, or revoke your trust at any time during your lifetime.

A revocable trust typically involves three parties: the grantor, the trustee, and the beneficiary.

- The grantor is the person who creates the trust and provides funding for the trust. There can be more than one grantor of a trust, such as a husband and wife who create a trust jointly.
- The trustee is the person who holds legal title to the trust property and is responsible for managing and investing the trust property. Often, the grantor will also be the trustee. A successor trustee is named to serve in case of the grantor’s death or incapacity.
- The beneficiary is the person or persons who will receive income or principal from the trust.

Once a revocable trust is established, you would need to fund your trust in order to avoid probate upon your

passing and to ensure that the trust instructions are followed. Funding a trust simply means changing the title of your assets from your name individually to the name of your trust or updating beneficiary designations to name the trust. Assuming you have transferred or beneficiary all of your assets to the trust, upon your passing, the trust would already have custody of your assets, so there would be no court proceeding, no lengthy delays in distribution, no extra fees, and no onerous administrative work for your family members.

Advantages of a trust

A revocable trust accomplishes everything that a will is intended to accomplish, but it also provides other advantages and possibilities. Where a will always requires probate to “speak,” a fully funded trust does not have to be probated. Further, if you have beneficiaries who have difficulties with managing their finances, you can use a trust to spell out precisely how the beneficiaries may use the funds. By doing so, you can ensure that your beneficiaries can not squander the trust assets as they could if the assets were given to them outright. Similarly, if your desired beneficiary is a minor, a trust can hold the funds and distribute them for designated purposes until the minor reaches an age that you deem appropriate for them to receive the balance outright.

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But you may not need it

If the only reason that you would establish a trust is to avoid probate, a trust may not be necessary. In many cases, will substitutes, such as joint ownership and beneficiary designations, will allow your estate to pass to your beneficiaries without the necessity of probate. As there are many possibilities with respect to trust planning, it is best to contact a competent advisor to discuss your particular situation and your specific goals in order to determine whether a trust is appropriate for your estate plan.

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