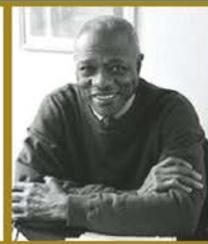


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Do I Need A Revocable Living Trust?

Q. What is a Living Trust?

A. A Revocable Living Trust provides for the management of your assets in case of incapacity and it allows your estate to be distributed after your death without the need for a potentially costly and lengthy probate proceeding.

Q. Can't I accomplish this with joint accounts?

A. Joint accounts create a present property interest in the joint owner. You are making a gift now. It also provides that the account goes only to the joint owner, which may result in the disinheritance of other family members. If the joint owner dies, you will not avoid probate since you do not have an alternate distribution. The bottom line is joint ownership does not accomplish everything you want.

Q. What if I hold my accounts "In Trust For" payable upon death?

A. This will avoid probate for those assets but will not give anyone access to the account during your lifetime if needed. Furthermore, if the designated beneficiary predeceases you, you will not avoid probate.

Q. Can I provide for management of my finances with a Power of Attorney?

A. A Power of Attorney does provide for management of your assets in case you become incapacitated. However, it is a burdensome

document to use. Unlike a Trust, the agent, called the Attorney-in-Fact, is not listed on the account as an owner and there is often a problem having the Power of Attorney accepted. Every financial institution has its own form and while banks are compelled under New York State Law to accept a Power of Attorney, other financial institutions are not, and many financial institutions do not like honoring them. Using the Trust is a more formal way of managing the assets. Also, the Power of Attorney ends at death while the Trust continues thereby usually avoiding a Court proceeding. Finally, the legislature is contemplating changes to the law governing Powers of Attorney that will make them more difficult to use.

Q. Why do I want to avoid probate?

A. You want to avoid probate because of the cost of probate and because of the delays of probate. The probate process can delay the administration and settlement of your estate. Depending upon the identity of your closest family members, their location and their health, the need to go through probate could take a substantial period of time and could dramatically increase the legal fees associated with your estate. In addition, the probate process in New York State requires that your closest family members be virtually invited to contest your Will if they are unhappy about its contents. The entire process must go through the Court and all such family members must be given formal notice of the proceeding.

Q. But I have a very simple family situation and I want to have a very simple Will. Wouldn't probate be simple in that kind of situation?

A. Maybe, but not necessarily. The probate process can be delayed in a number of situations including the following:

- a. If any of your immediate family members cannot be located.
- b. If any of your immediate family members are incapacitated or are minors and are legally incapable of consenting to the probate of the Will.
- c. If any of your closest family members are unhappy with the contents of the Will and wish to raise objections.

All such family members must be located and virtually invited to object to the Will even if they are to inherit nothing under the Will. If any of them are minors or are disabled (such as an elderly spouse) the court will often appoint a Guardian to represent their interests. This will greatly increase the cost of the proceeding and result in a substantial delay. These problems can be eliminated with the establishment of a Living Trust.

Q. What else will a Living Trust do for me?

A. A Revocable Living Trust will enable individuals selected by you to care for you during your lifetime and to manage your assets and pay your bills if you no longer wish to do so or are incapable of doing so. You would have complete freedom to be Trustee of the Trust and manage all matters on your own as long as you feel comfortable and are capable of doing so. As soon as you feel that the time has come that you no longer wish to be burdened or that you are no longer able to be burdened with your finances, you allow a Co-Trustee or a Successor Trustee to handle things for you.

Q. Will the Revocable Living Trust avoid Probate in all cases?

A. A Revocable Living Trust will avoid probate for assets which are transferred to the Trust, i.e. whose title has been changed to the Trustees. If there are assets which are not transferred to the Revocable Living Trust and do not have designated beneficiaries, then there will be a necessity for probate.

Q. What if I want a Trust to continue for the benefit of a disabled child, sibling or a spouse?

A. The Revocable Living Trust can be set up in such a way that the Trust will continue for a disabled relative after your death.

Q. What if I am afraid someone might challenge my Will?

A. All the more reason for having a Trust. The procedure for probating a Will invites a challenge. Your closest relatives, must be notified. If they disagree with the contents of the Will, they have a right to object. They can require the production of the witnesses to the Will and to make your Executor prove the validity of the Will at your expense. On the other hand, if they wish to challenge the Trust, they have to bring a proceeding in Court at substantial cost to themselves. Therefore, many people will be discouraged from attempting a challenge. In addition, since notice is not given, it protects against people who need not be notified. Of course, anyone who truly wanted to challenge a Will or a Trust could do so if they are willing to invest the time and the money.

Q. Will a Revocable Living Trust save me money on gift or estate taxes?

A. No. A Revocable Living Trust is tax neutral. However, estate tax planning can be done just as easily in a Trust as in a Will.

Q. Will a Revocable Living Trust affect my income taxes?

A. The assets in a Revocable Living Trust are treated as your own for all tax purposes. Depending on the identity of the Trustee, you may or may not have to file a separate tax return. If you are a Trustee, a separate return is not necessary.

Q. Do I have to have somebody else as my Trustee?

A. No. You can serve as your own Trustee. You can do so for the remainder of your life unless you become incapacitated. It may be advisable to appoint a Co-Trustee, but it is not necessary.

Q. How much will this cost?

A. It will depend on your own individual situation, including your family, your assets and the potential need for further Trusts for family members. However, it will cost several thousand dollars. The fees will be lower than the total cost of a Will that must later be probated.

Q. Will the Revocable Living Trust work for all assets?

A. It works for most assets. However, many times, a cooperative apartment cannot be placed in a Revocable Living Trust because the Board refuses to allow this type of ownership. If you have a co-op, you should determine whether or not the Board would allow you to transfer to the Revocable Living Trust before proceeding. Many other kinds of assets have beneficiary designations and need not or should not be put in the Trust.

Q. Who can be my Trustee?

A. You can be Trustee of your own Trust and then you could name somebody to be a Co-Trustee with you or as Successor Trustee. In some cases, if the assets are complicated, it is worth considering a Corporate Trustee.

Q. What if I change my mind?

A. It is revocable and amendable. You can change it at any time as long as you are alive and competent.

Q. How do my assets get into my Trust?

A. They must be transferred. This task is essential. You can attempt to do it yourself or you can arrange for it to be done for you.