

THE TRUTH ABOUT LIVING TRUSTS

➡ WHAT IS A LIVING TRUST?

Also known as a revocable living trust, it is a written document that lets you direct how your property will pass after your death. Like a Will, it lets you select an individual to be responsible for distributing your assets after your death. Unlike a Will, it allows property in the trust to pass outside of probate. Probate is the process by which a Will is proved valid, and the property is transferred from a deceased person's estate to his or her beneficiaries.

It is called a "living trust" because you set it up while you are alive, and to distinguish it from a "testamentary" trust contained in a Will which only takes effect at death.

It can be "revocable" (you can change or cancel it at any time) or "irrevocable" (once you have created the trust, you cannot change or cancel it).

➡ MYTHS:

Individuals are led to believe that a living trust will save them estate and inheritance taxes and avoid probate or reduce probate fees. Senior citizens, believing they are doing their children and grandchildren a favor, will spend \$2,000 or more on a living trust to "save probate fees and death taxes," while in reality a simple Will, Power of Attorney and some basic estate planning can usually accomplish the same goals at a fraction of the cost.

➡ SCAMS INVOLVING LIVING TRUSTS:

Misinformation and misunderstanding about probate and estate taxes make it easy for scam artists to prey on consumers' fears that their estates will be eaten up by costs, and that distribution of assets to their loved ones will be delayed.

Here is what Pennsylvania's recent Attorney General said in a consumer advisory titled "Beware of Living Trust Scams":

"Unfortunately, when it comes to living trusts, unscrupulous con artists are ready to play on consumers' fears of the unknown. In some cases, consumers - mostly elderly - are solicited by phone or mail to attend seminars or to set up in-home appointments to discuss living trusts. Living trusts are then marketed through high-pressure sales pitches which prey on the fear that assets will be tied up indefinitely or that estates are prone to heavy taxes and fees if a living trust is not in place. Sometimes victims are sold worthless 'kits', costing several thousand dollars, which are nothing more than standard forms that may or may not be valid, as laws concerning living trusts vary from state to state. In other cases, false promoters simply want to gain access to consumers' financial information so they can sell them other products, like insurance annuities."

WHO NEEDS A LIVING TRUST? Most people don't need a living trust. Examples of those who might benefit from a living trust include those owning out-of-state real

estate, or whose investments are so complex that they need a professional trustee. A living trust "kit" is unlikely to fit their particular needs.

WHAT IS "FUNDING" THE TRUST?

For a living trust to take effect, title to specific, individual assets must be transferred into the trust. Examples are: bank accounts, stock certificates and real estate. Contrary to what many living trust salespeople may imply, you must take affirmative steps to actually transfer your individual assets and fund the trust. This doesn't happen automatically by just drafting the living trust document.

DO THOSE WITH LIVING TRUSTS STILL NEED A WILL?

Yes. Your Will handles any assets which were not transferred into your living trust. This Will is called a "pour over" Will because it provides that assets not in the living trust are distributed in accordance with your wishes.

DOES A LIVING TRUST AVOID PROBATE?

It is true that you can avoid probate using a living trust, BUT REMEMBER, most people don't need a living trust in the first place and there are expenses associated with establishing and maintaining one. Pennsylvania residents should not be concerned with the cost of probate fees. In Erie, Pennsylvania, probate fees for an estate of \$1,000,000.00 are \$250.

DOES A LIVING TRUST AVOID ESTATE TAXES?

Living trusts are not designed to save on taxes at death. Assets in a living trust are fully taxable in the individual's estate. The best way to minimize estate taxes is to work with an attorney with expertise in estate and tax planning, whether you are considering a Will or a living trust.

DOES A LIVING TRUST SAVE LEGAL FEES?

No. The legal fee for handling an estate would most likely be the same whether your assets are passed on in trust or by a Will. The only legal costs saved by using a living trust are the costs incurred in a probate proceeding. However, the costs for probating a simple, uncontested Will are minimal. Also, you must consider the cost of drafting a living trust as opposed to a Will, the legal fees for transferring assets into the trust, and possible yearly maintenance fees for maintaining the trust.

DOES A LIVING TRUST AVOID DELAYS IN DISTRIBUTING ASSETS?

It is not true that the only way to ensure that assets can be available to your beneficiaries shortly after death is through a living trust. With both a Will and a living trust, some of your assets may be distributed shortly after your death, but some must be retained to pay all debts, expenses and taxes.

DOES A LIVING TRUST PROVIDE MORE PRIVACY THAN A WILL?

No. The Pennsylvania Department of Revenue requires that a copy of a living trust be attached to the Pennsylvania inheritance tax return, and that return must be filed at the Register of Wills Office. Therefore, a copy of the living trust will be a public record on file at the Register of Wills Office, just like a probated Will. Also, when the residence is transferred to the trust, a copy of the trust or an excerpt of it must be given to the Recorder of Deeds office.

▶▶▶ ADVANTAGE OF A LIVING TRUST:

You can avoid duplicate probate in another state if property owned at death in that other state is held in a living trust.

▶▶▶ DISADVANTAGES OF A LIVING TRUST:

1) The living trust does not provide a device to cut off the claims of creditors; having a Will with an Executor does;

2) The living trust does not protect the trustee against personal liability for claims of creditors or beneficiaries brought years after all assets of the trust have been distributed;

3) Trustees of living trusts have no authority beyond the assets in the trust, while an Executor of an estate is granted broad authority to wind up all of the decedent's affairs;

4) Legal fees are charged to prepare the living trust document and transfer assets to the trust, which are in addition to the legal fees charged to administer the trust, distribute the assets, and prepare and file inheritance and income tax returns following death; and

5) Placing assets in a living (revocable) trust will not prevent the Department of Public Welfare from including the trust assets when considering Medicaid eligibility. In fact, transferring certain otherwise protected assets into a living trust will cause them to become unprotected.

▶▶▶ WHAT IS THE BEST ADVICE FOR CONSUMERS:

When you need advice about your estate, avoid dealing with anyone but a trusted and well-referred professional in your community. Do not agree to contract for any legal services from someone selling door-to-door or over the phone.

If you believe you are a victim of a living trust scam, contact the Erie County Bar Association at 814-459-3111 or the Attorney General's Office 1-800-441-2555.

Most bar associations around the country have Lawyer Referral Services. This is a good source for a referral to a professional knowledgeable in estates and trusts as well as other areas of the law.

In Erie, Pennsylvania, the telephone number for the *Erie County Bar Association's Lawyer Referral Service* is 814-459-4411.

Websites and/or phone numbers for additional information on living trusts:

www.attorneygeneral.gov (under press office/consumer advisory)

www.aarp.org - formerly the American Association of Retired Persons

Erie County Bar Association **Lawyer Referral Service** - 814-459-4411

www.eriebar.com - Erie County Bar Association - 814-459-3111

(for additional copies of this brochure)



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The advantages of a living trust are very limited.

What you need to know before having one drafted.

Important information provided by:
The Erie County Bar Association
and
AARP



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