

## UNDERSTANDING LIVING TRUSTS

By Steven W. Shirley

### Easy To Understand

Anyone savvy to the complexities of property ownership should be familiar with the concept of the Living Trust. A Living Trust (also called a *revocable Living Trust*, or *inter vivos* trust) establishes legal control of an individual's assets during the person's lifetime. The Latin "inter vivos" translates to *among the living*, since a Living Trust is created while you are alive.

Creating your own Living Trust is no more complicated than making a will, but it can offer many advantages. With a Living Trust, you can avoid the cost and delays of the probate court process, reduce certain estate taxes and help protect your heirs.

Living Trusts operate much like testamentary trusts: property is conveyed by a granting party, or a settlor, to be held in trust by some party, or trustee, for the benefit of some third party, or beneficiary. A Living Trust is distinguished from a traditional trust in that it lets you manage your own trust, as long as you live. In effect, you, as Grantor, also act as your own trustee and beneficiary while you're still alive. The trust beneficiaries you designate assume rights to your trust property after your passing.

The flexibility of a revocable Living Trust is one of its main advantages, since it allows you to change your mind, make amendments, or end the trust anytime you wish. You can add property to the trust; transfer ownership of assets in the trust back to yourself; add or remove beneficiaries; name a new successor trustee; sell, give, or mortgage property owned by the trust. And, you can revoke (end) the trust at any time.

### Who's Who in a Living Trust:

- Grantor: the person who sets up the trust. Also sometimes referred to as the "trustor," "donor," or "settlor."
- Trustee: the person designated to manage the trust assets. In a Revocable Living Trust, the *grantor* and the *trustee* are usually the same person.
- Successor Trustee: the person who will manage the trust assets when the grantor dies (or becomes incapacitated.) The Successor trustee is in charge of transferring the trust property to your trust beneficiaries.

- Beneficiaries: the people who will receive the benefit of the trust's assets. The Grantor (you) is the original beneficiary, and those who receive benefits after your passing are known as "remainder beneficiaries".

## **Placing Your Property**

In order to create a valid inter-vivos trust, the settlor must take some property and give it to a second person. That second person, the trustee, may manage the property and give the profits to a third party beneficiary, or the trustee may hold onto the property until a specified time after which the third party beneficiary may take it, or the trustee may give the property to the beneficiary in pieces, over time.

All of these sorts of gifts may be conditioned according to the trust terms as set out by the settlor. The three types of gifts to the beneficiary may happen in various ways at various stages, but whatever the gift pattern, the settlor may dictate the way in which the beneficiary is to receive the income from the property, if any is generated, and also the way in which the beneficiary is to receive the property placed in trust, if he is to receive that property at all.

The official moment of creation for an inter-vivos trust is the moment the property to be placed in trust is delivered to the trustee. This moment, sometimes referred to as funding or delivery, is the turning point after which the property is controlled only according to the terms of the Living Trust.

In creating the trust, the settlor must separate the legal and equitable title in the trust property. However, a party can be both a settlor and a beneficiary of a Living Trust, so long as there is another party acting as trustee. A party may even act in all three capacities if there is either another trustee or another beneficiary.

Generally, a court will not deem a trust failed merely for want of a trustee to whom legal title to the property can be transferred. Rather, a court will appoint a trustee to control the property for the named beneficiary. If a settlor wants to retain optimal control of the property's use and management, it is in his best interest to name a trustee.

Of course, a Living Trust may not be the optimal instrument for all desired conveyances. However, Living Trusts are undeniably useful for a myriad of financial activities. From giving a child a metered allowance on which to live to avoiding the headaches of managing one's own real estate, the Living Trust can ease the process by which money and property are handled, easing the mind of the settlor and facilitating the comfort of the beneficiary.

In addition to reducing certain estate taxes, you can better protect your family's financial future, should you become disabled or depart. A Living Trust allows you to give your assets to whom you want, the way you want, and when you want. And, when you minimize the costs in time and money, you maximize the inheritance of your beneficiaries.

### **Living Trust Advantages**

- Identify who will inherit your property.
- Distribute your assets according to your wishes, so that the court isn't making the decision.
- Create a way for any minors to inherit assets.
- Help your family avoid the expense and delay of probate.
- Minimize estate taxes, while maximizing the inheritance of your beneficiaries.

By creating a Living Trust, you can gain better control over what happens to your property and help protect your family, particularly any minor children. With good planning, you can appoint beneficiaries, potentially save thousands in estate taxes, and most importantly, you protect your heirs from the expense and delays of probate.

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