

LIVING TRUSTS

What Happens When You Die?

Do you really know what happens to your property when you die? Most of us are confident we do – our Will takes care of it all, from distribution of real and personal property to taking care of our loved ones after we pass.

But does our Will actually accomplish what we want it to? What about taxes, probate, and privacy? What if your loved ones are somehow unable to inherit due to incapacity of age or for medical reasons?

Many of us think our Will may even keep our estates out of probate court, but the truth is your Will is actually a front-row ticket to probate proceedings, hidden fees, unexpected taxes, and public scrutiny of your (and your family's) most private affairs.

If You Already Have a Will:

Imagine yourself in this scenario: You have a Last Will and Testament that gives all of your property to your spouse upon your death, and secondarily to your children and grandchildren. At your death, if your estate is valued at \$500,000.00, your executor or personal representative could be paid \$15,150.00 or more, and your attorney could be paid \$14,050.00 or more, as provided under Arkansas statutory law. This would leave only \$470,800.00, or \$29,200.00 less to pass on to your beneficiaries. Your total estate is reduced by 6%, even though no estate taxes would have been due.

In 2007, if you have an estate of over \$2,000,000.00, estate taxes become due. Coupled with fees, the costs could become astronomical. For example, if your estate is worth \$2,250,000.00 at your death, your executor could be paid \$67,500.00 or more, your attorney could be paid \$53,000.00 or more, and state and federal estate taxes will be approximately \$100,000.00, thereby reducing your

distributable estate by \$220,500.00. This is money that could be distributed to your loved ones rather than paying for fees that could be avoided.

In that instance, your estate is left with approximately \$2,029,500.00 after deducting fees and taxes. Much of this amount could have been saved for the benefit of your loved ones if probate had been avoided through the Living Trust vehicle.

The Privacy Issue:

Additionally, probate is a public process. Your personal affairs are exposed to public inspection, whether by a creditor or an unscrupulous salesperson ready to take advantage of your heirs. Your personal representative is required to file a public accounting of your assets, as well as your heirs, and open your affairs to claims from creditors, challenges from persons for control of your assets, and personal information concerning your heirs.

“I Don’t Have a Will, So I Avoid Probate”:

This statement could not be further from the truth. Your invitation to probate court is not avoided just because you do not have a Will, indeed the problems multiply. Not only are the same privacy issues relevant, and the attendant fees and taxes applicable, but if you die without a Will, or intestate, Arkansas law has provided for distribution of your estate. The prescribed distribution does not take into consideration your minor heirs, or any heirs that may be incapacitated or otherwise unable to handle their own financial affairs. Legislators have determined a uniform way to distribute your assets that does not, and cannot, consider your personal needs or desires. The distribution method established by the state could even give all of your assets to the state in certain situations!

More Issues with Probate:

Upon our retirement, we often dream of our vacation house. Perhaps it is a cabin on a trout

stream, deep in the mountains, or perhaps a seaside bungalow. If we realize our dreams, we compound our probate problems.

The harsh reality is that if you own property in another state, a separate probate proceeding will have to be opened in that state in order to distribute the property to your heirs. More costs are incurred as an attorney in the state where the property is located will have to be retained, and the probate process is lengthened because the proceedings in the state in which you live cannot be settled until all other pending processes are completed.

Some Ways to Avoid Probate:

You may think that joint ownership avoids probate, but it only postpones it, or even invites it. After your death, the surviving owner becomes the sole owner, and the asset is ready to pass into probate upon the death of the surviving co-owner. If the survivor names another co-owner, probate is once again postponed, but control is irretrievably lost. Ownership rights of the asset change and you lose control of your property. Joint ownership means just that – you have given away rights to your property and have lost the ability to transfer it as you wish, without the consent of your co-owner.

Further, if your co-owner becomes incapacitated, the court could still end up involved, and the property could also become subject to the creditors of the co-owner. If the co-owner experiences financial difficulties either from creditors or the Internal Revenue Service, that property can be attached by these entities until the debt is paid. Sadly, liens against your property were caused through no action by yourself – only because you attempted to avoid probate in a manner that caused you to lose control. Additionally, your co-owner is under no obligation to honor your desires after your death as to disposition of the property to your heirs as the property now belongs to them.

Beneficiary designations have been touted as the solution to retaining control of your assets while assuring probate avoidance. Unfortunately, such designations are not suitable for minors or adults with disabilities. If you name your spouse, and then your children, as beneficiaries of your assets through this form of designation, if any of your beneficiaries becomes incapacitated, or is otherwise unable to handle his affairs, there is no provision for special distribution to that beneficiary. For example, if your child is a minor, he cannot inherit property. Therefore, the court must appoint a guardian for his estate. Similarly, if your spouse is disabled, the court again gets involved and privacy becomes a thing of the past. Once again, the probate court is entangled in your personal affairs.

At this point, after all you have just read, you probably feel probate is an inevitability – as certain as death and taxes, but there is an answer. This answer is one that is easy to set up, maintain and direct. It is a Living Trust.

A Living Trust is not intended solely for the rich and famous. It can be tailored to your specific needs and desires. It protects your property and simplifies the distribution of your assets after your death, according to your desires, and all without the interference and expense of probate.

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The Best Way to Avoid Probate:

Probate exists in order to distribute assets that are titled in the name of a person who is deceased. Because a living trust is not an individual, when it becomes the owner of your assets, it bypasses the probate process. Property titled in the name of your living trust is owned by the trust and controlled by your trustee.

An array of assets can be transferred to your trust, from tangible property such as your home

(and vacation home) to intangible items such as stocks and bonds and even family-owned businesses and LLCs. The trust, if drafted properly, can become a shareholder or a member, thereby avoiding problems of transfer upon your death or disability.

You, as grantor and trustee of your own living trust, retain all rights of control over your property, and the trust itself can be revoked if you determine it is not right for you. It can also be easily amended, just like a Will, as circumstances change. Administration of the trust is no different than the management of your own affairs. For example, the same tax returns are filed, and if you and your spouse are co-Trustees under your trust, either can act separately as if there existed no trust. Furthermore, funding or placing your property within your trust does not trigger gift taxes, as would be the case if property were given to your heirs prior to your death.

Upon disability, a successor trustee, whom you designate, would control the property for your benefit. This enables you to be cared for in the way that you direct and an additional advantage of your living trust allows you to decide who can determine your disability. You can choose your family doctor, your spouse, or a trusted friend. Without this important feature of the living trust, you and your family could be subject to public and potentially embarrassing probate proceedings to determine the extent and nature of your disability and seeking the appointment of a guardian of you and/or property.

Upon your death, your successor trustee could be directed to distribute your assets outright, thereby accomplishing the same goal as probate without the court proceeding. Alternatively, the trustee could continue to hold assets in trust for the benefit of persons who are unable to inherit property

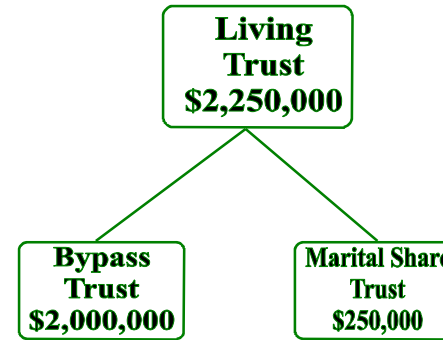
immediately due to age or some other incapacity. Regardless of how you choose to have your assets distributed, they are distributed according to your wishes, not those of the probate court.

With a living trust, all of your property held by your trust passes to your beneficiaries, in the amounts and in the manner you choose. Under the trust, you could choose to leave all of your property to your spouse, and then to your children and grandchildren. Your trust can continue after your death for the benefit of your children or grandchildren under the control of a successor trustee of your choosing. Your Living Trust can even provide for your benefit if you become incapacitated, without the necessity of a court-ordered guardianship proceeding.

Reducing Estate Tax Due With Living Trusts:

You may structure your Living Trust so that the maximum marital deduction is utilized for state and federal estate tax purposes. Many Living Trusts are structured such that at the Grantor's death, two new sub-trusts are created; a Bypass Trust and a Marital Share Trust. The Bypass Trust is funded with an amount equal to the maximum unified credit available to the decedent, with the remainder of the decedent's estate funding the Marital Share Trust. This scenario allows the entire estate of the first spouse to die to pass to the surviving spouse without any state or federal estate tax due. Also, the value of the Bypass Trust is excluded from the estate of the surviving spouse upon his or her death, since it was technically taxed at your death.

The principal and interest of both the Bypass Trust and the Marital Share Trust are available to the surviving spouse for life. At the surviving spouse's death, the balance of both trusts may pass to the children, or heirs of your choosing.



Seeking Advice:

If you feel a Living Trust may be a useful vehicle for you to achieve your estate planning goals, you should speak with your estate and tax planning professionals for advice as to your individual circumstances.

For more information, or to speak with someone about a Living Trust, contact:

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