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LIVING TRUSTS

CALCULATING THE BENEFITS

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CALCULATING THE BENEFITS

Chances are you've already heard a lot about the attributes of Living Trusts: avoiding probate and legal quagmires, sometimes lowering estate and/or income taxes, and protecting privacy. Yet it's also important to receive solid estate planning guidance before making final decisions, and to carefully weigh the benefits and potential drawbacks.

WHY CHOOSE A LIVING TRUST?

The desire to ensure that an heir is provided for materially is the most common reason for creating a Living Trust. In the case of minors, a trust allows a parent to provide for a child without giving the child control over the property. The parent can also mandate how the property is to be distributed and for what purposes.

A trust is also a useful tool for taking care of heirs who have mental impairments or lack investment experience. The trust document can establish that all money is controlled by a trustee with sound investment experience and judgment. Likewise, a trust preserves the integrity of funds when the recipient has a history of extravagance. It can protect the property from an heir's spendthrift nature as well as from his or her creditors.

This is also true of persons who may feel pressure from friends, con artists, financial advisors, and others who want a slice of the pie. A Living Trust can make it extremely difficult for a recipient to direct property to one of these uses.

A "spendthrift" provision in a Living Trust is often used to further preserve the integrity of assets. It prohibits the heir from transferring his or her interest and also bars creditors from reaching into the trust. Living Trusts are relatively easy to update, modify, or revoke in most cases. A will, however, is difficult to change, and establishing one requires many formalities.

SHORT-CIRCUITING THE ORDEAL OF PROBATE

Initially, a decision must be made concerning which family members are intended to benefit from the estate plan. Each choice may have important tax consequences. For the remainder of the report, we will assume that Mr. and Mrs. Smith and their children are the family for whom we will plan. Let's look at the unique issues involved in IRA planning.

MAINTAINING CONTROL

Living Trusts are harder to contest than wills. Part of the reason is that trusts usually involve ongoing contacts with bank officials, trustees, and others who can later provide solid evidence of the owner's intentions and mental state. A Living Trust that has been in place a long period of time is less likely to be challenged as having been subjected to undue influence or fraud. And because it is a very private document, the terms of the trust might not even be revealed to family members, allowing less opportunity for challenges to its provisions.

A Living Trust also avoids the painful ordeal of "living probate." That's what happens when a person is no longer competent to manage property, whether because of illness or other causes. Without a Living Trust, a judge must examine whether you are in fact incompetent, and all of the embarrassing details of your incompetence will be dragged out in court. The judge will appoint a guardian – perhaps someone you would not want to manage your affairs. Guardians act under court supervision and often must submit detailed reports, meaning that the process can become quite expensive.

With a Living Trust, your designated trustee takes over management of trust property and must manage it according to your explicit instructions in the trust document. The terms typically set standards for determining whether you are incompetent or not. For example, you may specify that your doctor must declare you can no longer manage your financial and business affairs.

MANAGING ASSETS, EASING TAX BURDENS

Living Trusts also provide a way for beneficiaries to receive the guidance of professional asset managers. A bank may be named as a Successor Trustee or Co-Trustee, allowing an experienced trust department to manage the assets.

Of course, eliminating or reducing taxes is one of the primary goals of estate planning. Trusts allow for a highly flexible approach to taxes. Income taxes can be slashed by transferring income-producing assets to a recipient in a lower tax bracket. Through the use of trusts, the state and federal government's estate tax exclusions can be doubled, without the filing of an estate tax return unless the decedent had more than the respective state or federal applicable exclusion. The permanent federal exclusion was $5 million, adjusted for inflation and was temporarily doubled from 2018-2025. Beginning on January 1, 2026, the permanent federal exclusion was increased to $15 million, as adjusted for inflation, although subsequent legislation could lower that amount. Keep in mind that state exclusions may be much lower. Some trusts are a prudent destination for annual gifts that fall within the government's tax-free gift allowance, which is $10,000, as adjusted for inflation. Note that the inflation adjustment has nearly doubled that amount in recent years.

ARE THERE DISADVANTAGES TO A LIVING TRUST?

A trust may not be needed by all individuals and families. Depending on the terms, trusts can result in some loss of control.

Also, it is important to transfer all titled property into the trust on a regular basis to keep it current. Property outside the trust is part of the individual's estate and will trigger the probate process you hoped to avoid by creating the Living Trust. Formal transfers of property into the trust are required even when you and the trustee are the same individual.

A Living Trust costs more than a Will to create, although it saves large amounts later through its probate-avoidance feature. Deeds will be necessary for transferring real property into the trust, and that will also involve some additional expense. Also, attention must be paid to keeping the trust current. That means making sure all property is in the trust, and adjusting it for changed circumstances; for example, after the birth of a child or the dissolution of a marriage.

If these seem like minor disadvantages, you're right. For most people, the attention and initial expense involved in a Living Trust is worth the significant benefits for family and other heirs: the avoidance of probate, the tax advantages, and the preservation of privacy and independence.

MEET THE FIRM

Frank & Kraft, Attorneys at Law is dedicated to providing thoughtful, high-quality estate planning guidance to individuals and families. We believe that informed decisions lead to better outcomes, which is why we offer clear, accessible resources to help you understand your options and plan with confidence.

When you visit or speak with our office, our goal is simple: to create a comfortable, respectful environment where you can openly discuss the matters that are most important to you and your family. Estate planning involves deeply personal decisions, and we are here to guide you through each step with clarity and care.

A well-crafted estate plan allows you to maintain control—ensuring your assets are distributed according to your wishes, on your timeline, and in the manner you choose. It can also help your loved ones avoid the delays and expenses of probate, while preserving what you have worked a lifetime to build.

Because estate planning is not one-size-fits-all, understanding your options is essential. That is why Frank & Kraft offers a wealth of educational resources and seminars designed to keep you informed and prepared. We are committed to helping you feel confident in your decisions and secure in your family's future.

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