
Living Trust Or Living Nightmare!

When Thinking About
Living Trusts - You May
What To Rethink!

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Over the years I have discussed living trusts with many of my clients, and when they would have a place in my clients planning strategy. After many discussions with clients and other advisors concerning Living Trusts, I came to the conclusion that there was a lot of misinformation out there that confused the general public. Many books have been written about avoiding probate and the costs associated with probate. Books have been written about the miracles of using the Living Trusts. Much of my references and resources come from my research comparing Living Trusts and Wills/Probate. I felt another side of the story was appropriate. This is an overview of the advantages and disadvantages of using a living trust rather than using a will.¹ Certainly, there are uses for living trusts, however, in many cases a living trust may not be worth the cost of arranging because of the size of the estate and the assets that make up the estate. For your own research we suggest you review the book, "Living Trust Living Hell", by John P. Huggard.

For more information you can go to my website: www.necgg.com and review some of the articles on trusts. If you would like more information on trusts, email me at: (tpnecgg@comcast), and I will send you a comprehensive booklet on trusts.

| Topic | Trust | Probate |
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| Litigation | Longer length of time expose to litigation because of secrecy; Doctrine of Merger ¹ ; (Trustee and Beneficiary of a Trust; The trust does not exist). The secret nature of trusts open them up for scrutiny. | There Is a limit of time. |
| Privacy | If there is a lawsuit against the trust, then the trust may also become public. If real estate needs to be re-titled, the trust becomes public, and is available because of real estate transaction. | Probate is public for those who wish to know. |
| Tax Savings | No tax savings | No tax savings |
| Probate Avoidance | If assets are assigned to the trust and re-titled, there will be probate avoidance. However, in most estates there is very little that can be probated since assets can pass by operation of law (Joint), and beneficiary designation. If assets are set up properly, there may not be a need for living trusts in many estates. | Most assets are not probatable between husband and wife since there is joint title and beneficiary designations. However, property passing outside of these areas is probatable. Depending on probate, fees will determine if a living trust is worth the time and expense. |
| Costs | Depending on the size of an estate, the trust costs will normally be higher than probate fees. A normal trust could cost approximately \$1,500-\$4,000. | The cost of probate depends on the size of probate estate and the organization of it. Normally this can be much less expensive than the cost of a living trust. |

¹ In the law of [trusts](#) the term "doctrine of merger" refers to the fusing of legal and equitable title in the event the same person becomes both the sole trustee and the sole beneficiary of a trust. In such a case, the trust is sometimes deemed to have terminated (with the result that the beneficiary owns the trust property outright)

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| Simplicity and Understandability | Living trusts are difficult and expensive to properly fund. In addition, these instruments are much more difficult to implement and understand. Funding a living trust requires assets to be re-titled to the trust. | Procedural; Based on assets passing through probate, usually straight forward. |
| Delay | Non-probate property will pass instantaneously upon one's death. Speedy distribution can result in a significant increase in taxes or loss of important protections and elections for the estate and its beneficiaries. | Probate assets are usually available for partial distribution within a few days or weeks after death. Delays that occur during probate are statutorily required and designed to cut off the claims of creditors, allows beneficial tax elections, etc. (disclaimer and other tax planning elections) |
| Work Involved | The proper funding and constant re-titling of assets in a living trust can go on for years. At the death of a grantor the assets in his living trust must be administered just like a probate estate. Assets must be gathered, valued and distributed. Debts and taxes must be paid. A living trust almost always increases or duplicates the work needed to monitor and distribute a grantor's estate. | Probate occurs only once - at death. The work to close the estate can last for several months. |
| Incapacity | Tax complications can arise from using a living trust to manage an incompetent's estate. A living trust that has not been funded is completely useless for managing the estate of someone who is mentally incompetent. | Simple durable power of attorney is usually sufficient to allow family members to manage the estate of a mentally incapacitated person. Another alternate would be the establishment of a guardianship. A guardianship is easy to establish, inexpensive, and effective in dealing with the estate of incompetents. |
| Protection from Creditors | The funding of certain assets may, in many cases, unnecessarily expose assets to the reach of the creditors. | None |
| Personal Liability | Transferring the ownership of a car into the name of a living trust jointly created by husband and wife may expose the marital house to loss if an accident involving the car occurs. | Wills and probate laws protect against such increase in personal liability. |
| Tax Liability | Having property in a living trust could jeopardize the use of potential tax saving planning, such as alternate valuation dates and disclaimers. | Use of alternative valuation dates and disclaimers are available through wills. |
| Liability of Family Members | Professional guidance usually is not sought. The privacy of trustee's transactions often sets the stage for mistakes. Could be exposed to huge loss, exposing family members to increased personal liability. | Because of its public nature, statutory guidance, and the assistance of professionals, family members are rarely exposed to increase personal liability under the probate system. |

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| Homestead Protection | Once a marital home is placed into a living trust, homestead protection in most states is lost. Even placing a car or boat into joint living trust can result in unnecessary exposure of jointly owned home. | Homestead protection ² |
| Protection from Challenge | A Living Trust has no limitation of challenges to its validity. | A will can be challenged for only a short time following the death of an estate owner. This can be one to three years, but may be reduced to the period that the estate is open, which can be much shorter. |
| Disinheritance Protection | There is a possibility that the use of a living trust could disinherit a surviving spouse. | Probate statutes protect surviving spouses against intentional or unintentional disinheritance. Probate laws protect surviving spouses from being left penniless when their deceased spouse's estate is insolvent by providing the surviving spouse with a statutory share of the deceased spouse's estate or a life estate. |
| Spousal Protection | There is no special provision in a living trust. | Statutory provisions for spouses |

For more information or if you wish to discuss the merits of whether or not a living trust makes sense in your own situation, you can call my office at 800-311-1115 to arrange a phone conference to discuss the merits. Or, you can email me at tpnecgg@comcast.net to let me know you wish to speak to me. You may also wish to attend our Adult Education Workshop which we have monthly. If you would like to attend one of our workshops, call us for the location and next schedule workshop. ³

Based on my experiences, a living trust can do some wonderful things in estate planning. However, it has been my experience to notice overkill using this type of document where a simpler approach would have been suitable. When considering using a trust or not, make sure all facts about your situation are known so the practitioner can evaluate the merits of their estate strategies.

Sincerely,




If you wish to discuss whether Living Trusts have a place in your planning, contact me and we can discuss as to whether it would make some sense.

¹ Living Trust Living hell 2004; John P Haggard, J.D. CFP, ChFC, CLU

² **Homestead exemption** is a legal regime designed to protect the value of the homes of residents from [property taxes](#), [creditors](#), and circumstances arising from the death of the homeowner spouse. Laws enacting such protections are found in [state statutes](#) or [constitutional](#) provisions which exist in many states in the [United States](#).

³ You should consult your attorney as to whether a living trust is suitable in your situation.