

Practical Probate: Advantages of Living Trusts Part 2

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In my last article, I examined the benefits a living trust provides for management of someone's assets should they become incapacitated. Another advantage of living trusts is providing for the transfer of trust assets after the person who created the trust dies. This advantage only applies to assets that are moved into the trust before the person who created the trust passes away.

Using the example in my previous article of the fictitious Mary Jones who created a living trust and moved some of her assets into the trust, let's see how this might work. After Mary passes away, the assets in her trust will be transferred according to the terms of the trust. Mary's trust could provide that upon her death, trust assets pass to family, friends or charities of her choice. The trust could also provide for some or all trust assets remain in the trust for a period of time for the benefit of any person, persons or charities.

Probate proceedings to determine the owner of trust assets would not be necessary. The transfer of trust assets could take place more quickly than if those assets required the probate court to identify the legal owners. Another advantage of living trusts is trusts are usually not subject to public disclosure the way most documents filed in probate court are. For those who place a high value on privacy, this advantage may be significant. Trust

assets may not be subject to the claims of Mary's creditors in the probate court - a third trust advantage.

The probate court would determine the owners of nontrust assets – assets that Mary owned in her name only with no beneficiary, survivorship or payable on death designation. If she had a will that gets admitted to the probate court, Mary's assets would be transferred to the beneficiaries she named in her will after her creditors and costs of administering her estate are paid. If Mary had no will when she died the probate court would apply Connecticut law to determine the legal owners of Mary's assets.

Living trusts have additional advantages, as well as disadvantages that will be the subject of future articles.

Living trusts are not appropriate for everyone. This article examines just a few elements of living trusts. Only after consulting a qualified, ethical attorney who will take the time to understand your situation and objectives, and explain your options, is it possible to make an informed decision as to whether a living trust is appropriate for you.

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