

Practical Probate: Disadvantages of Living Trusts

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In my last four articles, I reviewed the advantages of living trusts. Like any other estate planning tool, living trusts have advantages and disadvantages. This article will briefly examine some of the disadvantages of living trusts.

Living trusts must be drafted by an attorney to maximize the possibility that your wishes and objectives will be consistent with the terms of the trust. The cost of having a living trust drafted depends on several factors, including the complexity of the trust and the client's objectives.

Assets must be transferred into the living trust in order to realize many, but not all, of the advantages of the trust. Frequently, family members of someone who recently passed away bring the decedent's living trust to the probate court. They are unpleasantly surprised to find that nothing was ever transferred into the trust. This defeats the ability of the trust to bypass the probate administration process for assets that may have been in the trust if they had been transferred into it.

Transferring assets into the trust can be time-consuming and complex. For example, if real estate with a mortgage is transferred into a trust, the lender may accelerate the mortgage if the property is transferred into the trust without the permission of the lender.

Living trusts do not reduce Connecticut probate fees. Assets in revocable living trusts are included in the calculation of Connecticut probate fees. Unscrupulous purveyors of living trusts have been known to discuss "probate fees" (sometimes using probate fees from states other than Connecticut and including attorney's fees in the "probate fee") in their living trust sales pitches. Often, this practice misleads potential clients to believe that living trusts reduce Connecticut probate fees. What's not disclosed is that attorney's fees charged to draft the living trust can easily exceed probate fees.

Not all assets may be transferred to a living trust. For example, stock options and community property generally cannot be transferred to a living trust.

It's possible to accomplish some advantages of living trusts using less complex and less expensive legal tools, such as survivorship, payable on death, beneficiary designation or a durable power of attorney.

Another misrepresentation about living trusts is that anyone with assets valued in excess of an arbitrary number, for example, \$75,000, should have a living trust. Such broad statements are designed to encourage the sale of living trusts and are not, by themselves, a reasonable basis for

deciding whether a living trust is right for you.

Only after consulting a qualified, ethical attorney who takes time to understand your situation and objectives, and explain your options, can you make an informed decision as to whether a living trust is appropriate for you. Avoid “one size fits all” living trust packages that are sold to attendees of “free” seminars. That approach serves only to benefit high-volume, mass-production sellers of living trust packages.

THIS ARTICLE IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED TO BE, NOR SHOULD IT BE RELIED UPON AS LEGAL ADVICE. CONSULT A QUALIFIED ATTORNEY FOR ADVICE REGARDING YOUR SITUATION.

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