

Practical Probate: Introduction to Living Trusts

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Recently a friend asked me about living trusts. A family member of his placed their assets in a living trust. When they passed away, my friend was impressed at how quickly that family member's assets were transferred after death without involving the probate court. My friend asked whether a living trust would be right for him, and the differences between a living trust and a will.

There is a great deal of confusion about trusts. This is partly due to the claims some purveyors of living trusts make in order to sell more of their "one size fits all" living trust packages.

Like anything else, living trusts have advantages and disadvantages. It is only after these advantages and disadvantages are understood that an informed decision can be made as to whether a living trust makes sense for a particular person. Too often people believe that because a friend or relative had a living trust that it would be appropriate for them to have one as well. Everyone's situation is different, and each person has different priorities. These differences are why it's essential that an attorney takes the time to understand his or her client's situation and objectives before discussing options, including living trusts, for estate planning. I attended a living trust seminar where the presenter stated that anyone owning assets that exceeded a certain value should have a living trust. Just

because someone's assets exceed a certain value is not, all by itself, a sufficient basis for deciding whether or not a living trust is appropriate.

A trust is simply a means of owning assets such as accounts in financial institutions, stocks, bonds, real estate, motor vehicles, and other assets. A trust may be the named beneficiary of a life insurance policy.

A will is a document that outlines how a person wants their solely-owned assets distributed after they pass away. A will has no utility during someone's lifetime; it only has legal effect after the person passes away and the will is admitted to the probate court. Without these two events, a will is simply a piece of paper and does not determine what happens to someone's assets during their lifetime.

To review all the different kinds of trusts would take many pages. In this series of articles, I'm going to briefly discuss just a few features of trusts. A living trust is created and usually funded by someone while they are alive. Testamentary trusts, on the other hand, do not come into existence until someone passes away and their will, which contains a trust, is admitted to the probate court, and an acceptance of trust is filed with the court.

In my next article, I'll begin to review some of the advantages of living trusts.

Beginning in the 1960s, trusts started to become commonly used among the middle class in the United States. Before that time, trusts were almost exclusively used by the wealthy.

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