Kiplinger

Timely, Trusted Personal Finance Advice and Business Forecasts

MARCH 12, 2014

Four Facts of Living Trusts

Trusts are a valuable tool, but they may not be for everyone. It pays to know the ins and outs before you put your trust in a trust.

By **the Editors of Kiplinger's Personal Finance magazine**, Updated January 2014

Living trusts can be valuable estate-planning tool but they are sometimes oversold to people who don't really need them or who buy them for the wrong reasons. Consider the following claims often made for living trusts. The facts don't always support them.

CLAIM #1: A living trust will protect your assets from the hassle, delay, and expense of probate proceedings.

FACTS: True enough, but assets in a living trust aren't the only ones that skip probate. Property that is owned jointly with the right of survivorship, for example, automatically goes to the survivor. Pension, IRA, and Keogh plan benefits, and life insurance death benefits payable to a named beneficiary go to the one named without passing through probate. So do government bonds and bank accounts with a designated pay-on-death beneficiary. The fewer the assets you have that would have to go through probate, the weaker this argument in favor of a living trust.

CLAIM #2: Having a living trust saves money over running a will through probate.

FACTS: Maybe, but in some cases, this "cure" could cost more than the alleged disease. Here's why:

You still need a will. People often fail to transfer all their assets into the trust initially, and they acquire new assets over time. To avoid having some assets distributed under your state's intestacy rules, you need at least a simple will that "pours over" to the trust any property you've left out. You also need a will to make specific gifts to relatives, friends, and charities, and to name a guardian for minors. Lawyers may charge extra to draw up a living trust and pour-over will.

Changing title to assets is a nuisance and can be expensive. For the trust to work, you must make it the legal owner of your property. You have to complete special forms at banks and brokerage houses. New deeds have to be prepared and recorded for real estate, and you may have to pay a hefty transfer tax. Even after the assets are in the trust, you face potential hassles in dealing with them in your capacity as trustee.

You may not save on administration costs. There are typically three costs associated with probate:

- **Filing and court fees.** A living trust does avoid these costs, which are at least 3% of the value of the estate in most states. Most have simplified probate procedures for small estates.
- **Executor's commission.** In most states this is a percentage of the value of the probate estate. But in the majority of cases, the executor is a family member who waives compensation.
- **Lawyer's fees.** Most probates are largely paper-shuffling affairs, so the executor of your estate may be able to handle the entire process with only occasional advice from a lawyer who charges by the hour.

CLAIM #3: Your assets can be distributed faster through a living trust than they would if they were to go through probate.

FACTS: It's possible, but if your assets are uncomplicated and your will doesn't create a post death trust, there shouldn't be much difference whether the assets are distributed through a trust or through probate. If you have a complicated estate that requires federal estate-tax planning, a living trust still may not save a significant amount of time or money. A lawyer and accountant will probably be heavily involved and may have to prepare and file two death-tax returns, one state and one federal. That can take months, whether or not the plan is part of a trust.

CLAIM #4: You'll save taxes with a revocable living trust.

FACTS: No, you won't. During your lifetime, there are no income-tax savings attributable to earnings of the trust. Because you retain total control over the assets and can revoke the trust anytime you want, you are taxed on all the income (on your personal tax return if you are the trustee).

You won't automatically save on the federal estate tax, either. Assets in the trust are included in your estate for federal estate-tax purposes and are generally subject to state death taxes as well. However, a living trust can be drafted to include the same tax-saving provisions that can be placed in a will.