When to Use Living Trusts for Estate Plans

BY DONALD JAY KORN
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Any trust created during someone's lifetime is a "living trust." However, the expression usually refers to revocable trusts. As the name suggests, such a trust can be cancelled if the creator has a change of mind and wishes to reclaim trust assets. (An irrevocable trust may offer more tax and other advantages but also has more barriers to changes or termination.)

ABATE PROBATE

Probably the best-known benefit of revocable trusts is the ability to avoid the time and expense of going through probate. The creator ("grantor") of a living trust continues to control the trust assets and collect any income those assets produce. However, at the grantor's death the assets will pass according to the terms of the trust, without a court overseeing the wealth transfer.

Nevertheless, living trusts may be appealing for other purposes, including incapacity protection. "Revocable living trusts offer the flexibility of being able to quickly allow a successor trustee to take over at a moment's notice," says Nick Barringer, a financial advisor with Alpha Financial Advisors in Charlotte, N.C. "This can be effective in the event of death but also if a disability such as Alzheimer's or any other debilitating disease occurs. Another major benefit to encapsulating assets under a trust is the privacy offered to the family upon the decedent’s passing."

Avani Ramnani, director of financial planning and wealth management at Francis Financial, a wealth management firm in New York, has found that the benefits of a living trust are most visible for clients with large estates and a desire to provide for multiple beneficiaries.

"It is easier to lay out the terms and conditions of when and how assets might pass while avoiding probate expenses," she says. "A living trust also is a useful tool when beneficiaries may not be ready to handle the responsibility that comes with a significant inheritance. We have seen many trusts that can cater to children and grandchildren while keeping the assets within the family."

CHANGING TIMES

As is the case with any trust, a revocable living trust requires time and expense to create. There are no income tax benefits and a client's assets must be retitled to the trust. "It is not enough to have the trust document prepared," says Barringer, "because assets are not under the 'umbrella' of the trust until they are legally titled as such." Thus, assets not titled along the lines of "John Smith, Trustee of the John Smith Living Trust, dated MO/DY/YR" may have to go through probate; in case of John

Smith's incapacity, assets not titled in this manner won't automatically come under the control of a co- or successor trustee.

"Often, clients shy away from a trust account because it seems clunky and inaccessible," says Barringer. "We encourage clients to get comfortable with using the trust by setting up an account under the trust agreement. In the real world, the trust should not alter the way someone utilizes their accounts."

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