

# TRUSTS: What Are They? Do I Need One?



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**egii** Revocable "Living" **rit** Trusts have become increasingly popular as substitutes for Wills in estate planning. Many people believe that by creating a Trust, naming themselves as Trustees, and transferring their assets into the Trust, they will save taxes, simplify the administration of their estates, and save money for their children or other beneficiaries. Others believe that if they set up and fund such a trust, their assets will be protected if they need to go into a nursing home. Unfortunately, these beliefs are not based in fact. Some of these "myths" are untrue in all cases, some are untrue because of the state you live in. Read on:

## Myth # 1:

Revocable Living Trusts Save Taxes. This is absolutely wrong. All of the assets in a living Trust are subject to both State Inheritance tax and Federal Estate Tax, and here in this wonderful state, the New Jersey Estate Tax. One of the reasons this is so is that a Trust which you set up and control (as Trustee), and you are the beneficiary of (during your lifetime) is considered to be you for tax purposes. Kinda makes sense, doesn't it?

If you want to argue that assets should not be taxed at your death, you have to really give them away! If you want to use a Trust, it has to be irrevocable, you cannot control it, and you cannot (in most instances) be a beneficiary at all! A living Trust is also treated as you for income tax purposes and thus saves no income taxes during lifetime.

## Myth # 2:

A Revocable Living Trust is Cheaper to Administer than an Estate. This may be true for residents of some states (e.g. Florida), but the generalization is wrong more often than it is right.

In New Jersey, Pennsylvania, and many other states, the much-feared "PROBATE of a Will" usually takes less than an hour and does not require a lawyer. (Ant I really telling you this??) The real work in the administration of an estate is the collection of the decedent's assets, the payment of debts and death taxes, and the distribution of the remaining assets according to the Will. The administration of a Living Trust is almost exactly the same, because the Trust assets must be collected, the debts and death taxes must be paid, and the remaining Trust

assets must be distributed. The *only* advantage of a living Trust is that if the decedent was *not* the Trustee, the time and expense of searching for assets might be avoided. That advantage must be weighed against the time and expense of transferring assets to the Trust during lifetime, as well as the inconvenience and loss of control if you are not the Trustee during your lifetime!

Because the steps necessary to settle a Trust are similar to the steps necessary to settle an Estate, the legal fees should be about the same, especially in New Jersey.

## Myth # 3:

A Living Trust can be Distributed Faster than all Estate. This is also wrong. There is no law preventing an Executor from distributing all or any part of the estate at any time, as long as the Executor is willing to assume the risk of loss if there are additional debts or taxes, or if the distribution is incorrect.

The Trustee of a living Trust is also liable for debts and taxes, and may delay distributing assets for the same reasons.

As a practical matter, most Executors are reluctant to distribute assets until the death taxes have been settled, which can take front nine months to two years, and there is no reason for the

Trustee of a living Trust to distribute assets any more quickly.

## Myth # 4:

Even if it might do no good, a living Trust will do no harm.

Not necessarily. In their desire to avoid the alleged evils of "probate," many people jump out of the frying pan and into the fire, running directly into the arms of charlatans who are eager to sell "packages" of living Trusts for exorbitant

fees. And those Trust documents may be poorly written, with the result that large fees have been paid for documents that actually result in unnecessary taxes, legal fees, or court costs.

And the probate system is not without its advantages, because it requires notices to beneficiaries and a clear remedy if the estate is not distributed according to the will. In their desire to avoid probate litigation, many people create Trusts that give fewer rights to their beneficiaries and so, if the Trustee turns out to be dishonest or hostile, the beneficiaries of a living Trust may find themselves hampered by the Trust document in their attempts to recover their inheritances.

Most importantly, if clients (incorrectly) believe that the Trust will protect their assets or save taxes, they will be less likely to ask questions and discover the problem before it is too late.

## When would a Revocable Living Trwo be appropriate?

In my practice, I utilize Revocable Living Trusts to:

- 1) Create Privacy: When people would prefer that others not be given the opportunity to see what their Wills say (because Wills are public records, recorded when probated, and Revocable Living Trusts are private family documents and not recorded); and
- 2) Avoid Ancillary Probate: When clients own real estate in states where probate is difficult, especially Florida (so that we avoid the need to probate the Will in NJ and then again in another state, which is required to transfer real estate only).

Because State laws vary widely, it is important to work with a lawyer licensed in New Jersey, and because most lawyers are not familiar with the workings of trusts or tax law, a lawyer who specializes in estate planning.

Call 856-673-0048 for more information.

## There are all kinds of Trusts . . .

Revocable, Irrevocable, Living, Testamentary, Disclaimer, Special Needs, etc.

It is confusing, to be sure. For the most part, lawyers learn little or nothing about trusts in law school. I learned everything I know "OTJ" ("On The Job") after law school!

You will note that I did not include Trusts in my prior articles as one of the documents everyone should have. That is because not everyone needs one.

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