

WHEN IS A LIVING TRUST APPROPRIATE?

A Living Trust is an agreement between an owner of certain assets and a trustee, whereby the owner (the Trust creator) transfers assets into the name of the trustee, who in turn, invests, manages and distributes them for the benefit of the creator and/or other beneficiaries according to the terms of the written trust agreement. A Living Trust will typically provide for the management of assets during the creators lifetime as well as their disposition after the creators death.

A Living Trust can be an important estate planning tool for some individuals in certain circumstances, but it is not appropriate for everyone. Since a Living Trust provides for lifetime management, it may be especially suitable for an older person who no longer wants to manage their assets. This individual can create a Living Trust with a bank or a trusted individual as trustee, to relieve themselves of investment and management worries during their lifetime and also to dispose of their assets upon their death.

A Living Trust can also be a useful tool to hold out-of-state property. If a person dies owning real estate in their name (for example, a condominium or vacation home) in another state, the executor of the estate will have to initiate a separate probate proceeding in that state to pass title to the property after the original probate in the deceased state of residency. However, if you place the out-of-state property in a Living Trust, it avoids the necessity for an additional probate proceeding in the non-death state. Bear in mind, that tax proceedings, may still be necessary in the other state, whether or not the real estate is held in a Living Trust.

The creator of a Living Trust can be their own trustee or they can name a trusted family member or friend. Many individuals will name a bank as trustee or co-trustee as well a successor trustee, should the creator become incapacitated or no longer wishes to serve as their own trustee.

It is important for someone considering a Living Trust to consult with an attorney experienced in estate and trust law to discuss the pros and cons of creating a Living Trust in light of their own particular circumstances. This discussion will help determine whether or not it will be appropriate to have a Living Trust as part of your estate plan.

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