

MOST COMMONLY ASKED QUESTIONS (AND ANSWERS) ABOUT LIVING TRUSTS

Q. How does a revocable living trust avoid probate?

A. Probate is a creature of the law and is the way the property of a deceased person transfers ownership. The law, however, recognizes a trust as being the owner of all property held by it, even though the original owner controls or can revoke the trust.

In the eyes of the law, the decedent does not technically own the property and, as a result, it is not included in his estate for purposes of probate. Since the property avoids probate, it therefore avoids the attendant costs, delay and publicity.

Q. What factors determine if I should have a will or a living trust?

A. Generally, the older and wealthier you are, the more sense a living trust makes. I would say anyone 55 or older with assets over \$100,000 should consider the use of a living trust.

Q. My estate is over \$400,000 and is held jointly with my wife. Any problem?

A. Yes. Joint property could be the love trap that could rob your heirs. Joint property is also the poor man's will. Unnecessary estate taxes and probate can be avoided through proper estate planning. You also lose control of your assets if jointly held.

Q. What does a successor trustee do in a living trust?

A. At disability or incapacity, your successor trustee looks after your care and manages your financial affairs for as long as necessary, using your assets to pay your expenses. When you recover, you automatically resume control. At death, your successor trustee pays off your debts and distributes your estate according to your instructions, avoiding probate, delays and costs.

Q. How expensive is probate?

A. It usually costs 6 percent of the person's assets.

Q. Once assets are in probate, how long will it take before the estate is settled?

A. It depends. On the average, it takes 16 months.

Q. Is it true that probate is a matter of open public record?

A. Yes, the probate court is open to the public. Anyone, for any reason, can examine most of the court files and see your will and any codicils to it after your death.

Q. I realize that living trusts cost more than wills, but do I have to pay another big fee if I want to change my trust?

A. No. A trust can be amended by a simple document called a "trust amendment". This is a low cost document.

Q. Is a trust that is incorporated into a "last will and testament" (testamentary trust) the same as a living trust?

A. The property in the will would have to be probated, which is very expensive and time-consuming. This testamentary process called probate can be avoided for those assets placed into a living trust during the owner's lifetime.

Q. Why don't more families have a living trust?

A. Inertia and ignorance. Very few people take the time to fully understand the benefits of a living trust.

Q. Can a living trust save estate taxes?

A. Yes, a substantial amount. For example, if you and your spouse die in 1995 with an \$800,000 estate, a living trust can save \$80,000 in estate taxes.

If you have any questions, please call a Spiegel & Utrera office listed below:

MIAMI, FL	NEW YORK CITY, NY	TAMPA, FL	LAS VEGAS, NV
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