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A Homeing Arts Agency on Aging

Living Trust Planning Pitfalls

By Jeff Isaac

'Trust the Living Trust'—Legal Expert's Tips for Navigating a Litany of Living Trust Hazards

There's no doubt about it...establishing a living trust can be vexing at best and downright disastrous at worst for the unenlightened who go about it in all the wrong ways. Indeed, instituting a living trust can be complicated, uncomfortable, time consuming and expensive, which is why far too many people steer clear of this extremely viable estate and retirement planning vehicle.

"Most people don't like to think about their own mortality, but a living trust should be considered by all for the myriad of benefits it provides, including saving the expense and delay of probate, reducing estate taxes, affording more privacy than with a will, and allowing asset management transferability should you become incapacitated," notes expert attorney Jeff Isaac, creator of the "Everything You Need to Know About Living Trusts." "However, while relatively simple and straightforward in intent, living trust planning is rife with pitfalls that, with just a bit of insight, can be easily avoided."

With this in mind, Isaac offers this advice on establishing a living trust without falling into common, but avoidable, traps:

1. Fully fund the trust.

You should ensure all of your current and future assets, including banking accounts, real estate interests and investment vehicles, are inducted into the trust to ensure they are not subject to probate. Funds tied up in probate can take years to ultimately distribute to the rightful heirs.

2. Ensure document integrity.

Powers of Attorney, Living Wills, Healthcare directives and other such documents should be reviewed and, if necessary, updated every three years.

3. Stay current.

Do your best to keep up with changes in probate law that may positively or negatively affect your estate.

4. Consider new family members.

If, after establishing a Living Trust, you have more children or grandchildren, or want to take care of an in-law, you should ensure they are provided for in the documents. If not included in specific terms, they may not receive anything from your estate even though it would be your wish.

5. Strategize beneficiary disbursement schedule.

Who do you want to receive your money or your special gifts, and on what schedule? All at once, in which case all could be squandered? Every five years starting at a specific age? Don't forget that you can also nominate anyone—non-relatives or even charities—to receive your assets.

6. Consider Trustees carefully.

Choosing the right trustee to manage your estate once you're gone is critical, and should be assigned judiciously. And, if you have multiple children, consider a joint trustee situation carefully as if the trustees do not agree, a judge will decide on the matter.

7. Joint tenancy is a myth.

Does joint tenancy really avoid probate? The short answer is "no." Joint tenancy is "the big hoax," so beware if your attorney is trying to steer you in this direction.

8. Trust scams abound.

Many people—some attorneys, some not—claim to provide quality trust services. Do your homework, check references and, if possible, use a Living Trust specialist rather than a legal generalist.

9. Living Trusts are NOT investments.

Beware Trust preparers who sell annuities which, more than likely, is the preparer's primary goal as he/she will derive income from sales of these vehicles. If the preparer truly has your interest at heart, they will not try to sell you anything, but rather will ensure all of your current assets are appropriately accounted for and protected.

10. One size does not fit all.

The old adage remains true, particularly in the realm of Living Trusts – "you get what you pay for." Those offering Living Trust services at rates well below the industry average are more than likely using "boilerplate," templated documentation that is not customized to your situation. Such circumstances offer little protection, keeping your estate at risk of probate. 

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