

## When Are Living Trusts The Best Choice? (Part III)

### Special points of interest:

- For some people, living trusts are the best choice for estate planning
- Review your assets and objectives first, then select the best estate planning tool for your situation

### Introduction

This is the last article in our three part series to compare the benefits of wills and trusts. In the first article (Part I), we examined whether living trusts really save money on administration and probate costs. The second article (Part II) addressed the common misconception that living trusts make it easier to distribute property after a person dies. We concluded that a living trust may not save money, and it may not be more convenient to use than a will.

Since living trusts may neither save money, nor be more convenient, then exactly when should they be used? The truth is that a living trust is a valuable and flexible estate planning tool, even though most people use them for the wrong reasons. In this article, we'll look at some of the situations in which living trusts *are the best choice* to meet specific estate planning goals.

### What Is A Living Trust?

A living trust is a contract between a *grantor* and a *trustee*. The grantor is the person who creates the trust, and the trustee is the person who manages the trust. The property that is the subject of the trust is called the *corpus*. The terms of the trust agreement between the grantor and the trustee concern how the corpus will be managed. Those

terms are only limited by the imagination of the grantor. A trust can provide for long term management of the corpus, or simple distribution of the corpus to designated beneficiaries after the grantor dies. The character of a trust as a property management tool makes it an ideal instrument in certain estate planning situations.

### When Should A Living Trust Be Used?

Trusts should be considered anytime that property must be managed for the benefit of another person. A trust allows a grantor to maintain control of property even after he or she dies. There are many common situations in which a living trust should be considered as part of a comprehensive estate plan. Here are a few examples:

***Blended Families.*** Married couples with children from previous relationships are very common. However, these family arrangements raise a number of potentially complex estate planning issues.

Naturally, married spouses want to provide adequate resources for each other in the event that one of them dies. As a result, most couples own all of their property jointly, and designate each other as the primary beneficiary of their assets. In short, they intend to transfer all

of their property to the surviving spouse. But what happens to the couple's property after the second spouse dies or remarries?

A surviving spouse that owns all of a couple's property without restriction is free to do whatever he or she wants with the property. The surviving spouse may designate new beneficiaries, including a new spouse, or his or her own children. Either way, the children of the first spouse to die may not realize any benefit from the estate of their deceased parent. Unfortunately, this is a very common scenario. In many cases, the surviving spouse does not even intend to disinherit the children of the deceased spouse, but does so by accident or neglect. You can easily imagine the legal battles that may arise with such an unfair outcome.

Living trusts can be used to avoid the unintended disinheritance of children in a blended family situation. In fact, with proper planning and management, the surviving spouse and all of the couple's children can benefit from their property, and maintain family harmony at the same time.

#### ***Financially Independent Spouses.***

Many people delay marriage to pursue a career, or they may remarry after reaching financial independence. Financially independent spouses already own significant amounts of property before they marry. For these couples, it may be important to keep their assets separate in order to carry out their individual estate planning goals.

A living trust is an ideal tool to maintain separate control over assets during marriage, and in the event of divorce or death. A will cannot be used to completely disinherit a surviving spouse. Therefore, owning assets individually, and using a will to distribute the property to non-spouse beneficiaries, may not be an effective plan. For financially independent spouses, only a trust can accomplish the objective of maintaining financial separation between them.

***Real Estate Management (Cottage Trust).*** Some families have valuable real estate that they desire to retain for use by the family members even after the primary owners are deceased. This is quite common

in Michigan where so much lake front property is passed from generation to generation. A living trust provides the means to manage the property fairly, to provide adequate funds for maintenance, and to ensure a smooth transfer upon sale or distribution.

***Divorced Persons With Young Children.*** Most parents want to provide financial support for their children in case of death. However, if a child inherits property from a single parent, then who will manage it for the child? Without a written estate plan, the child's *surviving parent* will usually be designated to manage the child's assets. Most divorced parents cringe at the thought of a former spouse managing (and spending) their hard earned money.

A trust for the benefit of the children will avoid this outcome because parents can designate an independent trustee to manage a child's property. In this way, the child's surviving parent will not have direct control of the assets intended for the child. A support trust for children can also be incorporated in a will.

***Family Disputes.*** Some people are just born to fight. If your family has such a member, a living trust may be the best choice for you. A person that fights over how assets are distributed from an estate may be disinherited by means of an express written instruction called an *in terrorem* clause. *In terrorem* clauses inserted in wills are not enforceable in Michigan. They are, however, enforceable when placed in a revocable trust. This means that a family member who decides to fight over his or her trust inheritance may get nothing in return.

***Disinheritance of a Spouse.*** It sometimes happens that one spouse wants to disinherit the other. This may occur, for example, when the spouses are estranged but not divorced. Whatever the reason, a will cannot be used to completely disinherit a current spouse. Michigan law allows a surviving spouse to inherit a certain portion of property owned by a deceased spouse even if his or her will states otherwise. On the other hand, property held in trust is not subject to the same rules. Nevertheless, even with a trust, a surviving spouse will always be entitled to

certain "allowances" for his or her support that are provided by Michigan law.

**Privacy.** Probate court proceedings are a public forum. Some clients do not want their friends, extended family, or other curiosity seekers to snoop into their personal affairs. Living trusts are an effective means to avoid probate when privacy is an important consideration.

**Multiple Probate Proceedings.** In Michigan, the cost of probate is not as high as most people believe. However, that is the not the case in every state. When a person owns real estate in more than one state, probate will be required in each location. Therefore, it may be beneficial to reduce the cost of multiple probate proceedings by using a single living trust.

**Asset Management.** Trusts are excellent asset management tools – especially in the hands of a competent trustee. The grantor of a living trust is only limited by his or her imagination when it comes to directing the use and distribution of property. Trusts are the best choice for flexible distribution arrangements, or where long term management of property is desired to achieve specific outcomes. For anyone who wants to control their property even after they die, a trust is the best choice.

**Estate Tax Planning.** Living trusts may provide significant estate tax savings for people with large amounts of property. Trusts can be used to efficiently manage the timing an amount of estate tax payments to reduce the overall tax burden. In many cases, estate taxes can be reduced to zero. However, tax planning is especially complex, and usually requires the creation of more than one trust to achieve maximum savings.

## Conclusion

Deciding whether to use a living trust can be complex task. However, that decision should not be the first step in planning your estate. Rather, the first step is to ask yourself, "What assets do I own and to whom do I want to distribute them?" Then consult an estate planning attorney to discuss the best way to accomplish your specific goals. This method will greatly simplify the estate planning process. An estate plan that fits your life may not be as complex or expensive as you think. In most cases, there really is a best choice for you.



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