

James Cissell JUDGE, PROBATE COURT
HAMILTON COUNTY, OH



Living Trusts

**Informational guide
about Living Trusts**

LIVING TRUSTS AS ESTATE-PLANNING TOOLS

A living trust is an agreement wherein the person creating the trust (often referred to as the grantor, settlor, or trustor) appoints a trustee to hold assets for the benefit of one or more beneficiaries. The same person may serve in all three of these roles. It is typical, although not required, for the grantor of a living trust to retain the benefits of property put into the trust and to also serve as the trustee while living. A written agreement outlining the roles, duties and powers of the parties is usually drafted by an attorney and signed by the grantor and trustee.

PURPOSES OF A LIVING TRUST

Living trusts can be used for a number of reasons and are often utilized as an estate-planning tool to enable an individual to dispose of his or her property upon death. There are several purposes a grantor may have when using a living trust in preparing an estate plan. These include such things as avoiding probate, limiting estate taxes, holding assets for the benefit of minor children until they reach an agreed upon older age, or holding assets for an individual with special needs. An individual's trust agreement could be drafted to cover one or more of these purposes.



ADVANTAGES OF USING LIVING TRUSTS

There are several advantages to using a living trust as an estate-planning tool. These include:



Privacy. The trust agreement is a private document and, unlike a will, is not filed with the probate court upon the grantor's death. Additionally, to the extent the trust is funded with property during the grantor's lifetime, those assets would not come under the probate court's jurisdiction and would not be reported on any probate court document which is a matter of public record.

Speed of Transfer. The trust agreement usually provides what is to be done with the assets in the trust upon the grantor's death. The trustee/successor trustee is given direction and authority in the trust agreement to handle all necessary transfers of trust property. This normally is done without probate court involvement. As a result, transfers can occur more quickly since no court orders are required to be obtained before assets can be transferred.

Avoidance of Probate Expenses. A funded living trust will not require probate court involvement for the assets held in the trust. As a result, court costs (filing fees) and statutory executor/administrator fees will not apply. Other expenses normally associated with the probate of an estate, such as appraisal fees, bond premiums and recording costs may also be avoided through

the use of a living trust in certain situations. Of course, there is usually a provision in the trust agreement for the payment of trustee fees, which are not set by statute. Such fees are not usually part of a probate estate.

DISADVANTAGES OF USING LIVING TRUSTS

There are also disadvantages to utilizing a living trust as an estate-planning tool. These include:

Effort to Fund Trust. In order to totally avoid probate court involvement, a living trust must be fully funded with all of the grantor's assets being transferred into the legal ownership of the trust while the grantor remains alive. This process is time consuming and involves paperwork and, sometimes, expense. Assets acquired after the trust is created must also be transferred to the trustee to avoid probate. Simply executing a trust agreement will not be sufficient to avoid probate court involvement upon the grantor's death. This process of re-titling and transferring assets to the trustee is more time consuming than simply having a will drafted.

Expense. The costs of creating a living trust document are generally higher than having a will drafted. Although savings may occur in the avoidance of probate after the grantor dies, there are higher up-front expenses associated with creating a living trust. There may also be expenses associated with transferring certain assets into the trust, such as recording costs to transfer real estate or title fees to transfer

motor vehicles into the trust. The payment of trustee fees may be necessary when the trust is funded as opposed to when the grantor dies. These fees can be significant and will be incurred on a periodic basis.

If costs are an issue, comparisons should be made between the costs of probate and the costs of setting up and maintaining a trust as the costs of a trust, particularly small trusts, may exceed the costs of probate.

Lack of Oversight. Since living trusts are private documents, there is usually no supervision of the administration of the trust by any court. Assets held in funded living trusts are not subject to probate court jurisdiction once the grantor dies. While this may be appealing in some circumstances, situations can occur where having probate court involvement is desirable.



OTHER CONSIDERATIONS IN USING LIVING TRUSTS

In addition to the above, there are other considerations which should be taken into account in deciding whether to use a living trust as an estate-planning tool. These include:

- The effect a living trust would have upon a person's income taxes.
- The effect, if any, the trust would have upon estate taxes once the grantor dies. (Most revocable living trusts do not shield trust assets from the estate tax.)
- The effect a funded living trust has upon eligibility for Medicaid.

An attorney who is knowledgeable in estate planning, taxation and probate matters should be consulted in determining whether a living trust is the best estate planning tool to use.





Judge James Cissell

As Probate Court Judge, my goal is serve the public in the most efficient and courteous manner possible. I am providing this brochure to help with any possible questions or concerns you may have while working with the Probate Court. I hope you find this information helpful.



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The information in this pamphlet is provided as a service of the court and does not constitute legal advice which can only be given to you by an attorney. Many probate and family law matters involve complex and valuable legal rights. You should always speak with an attorney before filing any papers.



Hamilton County Probate Court
James Cissell, Judge

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