

Living trust prevents probate costs, delays

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What is the best way to hold title to real estate? That question was recently asked of me by an elderly lady at a cocktail party. Without missing a beat, I answered, "In a living trust." She then added: "Oh, I'm so glad you said that. My husband and I just spent over \$1,000 to have an attorney put all our major assets into a living trust." I assured her she'd done the right thing.

A revocable living trust is an easy way to hold title and avoid probate costs and delays for your heirs after you're gone. While you're alive, you are still the owner, called the trustee. That means you supervise everything just as before. You can buy, sell, refinance or do whatever you want with your real estate and other assets.

But when you die, the trust becomes irrevocable. The trust assets go to whomever you specified in the trust (after paying your bills, of course). Until you die, however, you can change or revoke the living trust. The major advantage of a living trust after you pass on is that there are no probate costs or delays.

Instead of waiting months, or years, for probate delays, your heirs can receive your assets quickly and without complications. There will be virtually no costs, unless you leave a net estate over \$650,000 in 1999. In 2000, this federal estate tax exemption increases to \$675,000 per decedent.

Another major advantage of a living trust occurs if you should become unable to manage your affairs, perhaps due to a stroke or Alzheimer's disease. Then your alternate or successor

trustee takes over. That might be your spouse or an adult child. If you didn't have a living trust, the court would appoint a guardian or conservator, at considerable expense, to manage your assets.

Avoiding probate

When we die, our assets pass to whomever we designate in our wills. If we die without a will, the state of residency determines who shall receive our assets. The local probate court supervises this estate administration procedure. The statutory probate fees and delays can become enormous. For example, when Marilyn Monroe died, her \$1 million estate cost approximately \$900,000 in attorney fees and probate costs. Only \$101,000 was left for distribution to her heirs when the estate was finally closed 18 years later.

Perhaps more important than probate costs are the unnecessary delays. To illustrate, when my mother died a few years ago, the only asset she didn't hold in her living trust or in joint tenancy was title to her condominium. Her Minnesota lawyer gave her bad advice that putting title to her condo in a living trust would forfeit her property tax advantages. That was incorrect. It took almost 12 months to complete probate and clear the title to her condo.

Yes. Holding title in joint tenancy with right of survivorship means the surviving owner receives title to the entire property without probate proceedings. In most states, only a certified copy of the death certificate and an affidavit of survivorship must be filed with the county recorder to remove the deceased joint tenant's name from the title.

That may be fine for spouses and

close relatives or friends you want to receive your property. But what happens if you want to sell the joint tenancy property before you die? If the joint tenant doesn't agree to sell, your only choice is a nasty court procedure called a partition lawsuit to force a sale.

Holding title in a revocable living trust is far better. During your lifetime, you (with your spouse, if you desire) control the living trust property. Upon death, the property automatically goes to whomever you specified in the living trust without any probate costs and delays.

Creating living trust

Although everyone needs a will for assets not included in their living trust, a living trust substitutes for a will by passing major assets according to your wishes. The three parties to a living trust are the trustor(s) who creates the living trust, the trustee(s) who holds title to the trust assets and manages them, and the beneficiary for whose benefit the trust is created. Husband and wife can be co-trustors, co-trustees and co-beneficiaries.

When a living trust is created, major assets should be transferred into the living trust to "fund" it. Initially, the trustor, trustee and beneficiary are the same person(s). Trust assets can be bought, sold, refinanced and managed as before. Only after the trustor becomes incapacitated or dies does the living trust become irrevocable. Until then, it can be changed or revoked if the trustor's wishes change.

Avoidance of probate costs and delays is the major advantage of a living trust. Privacy is another advantage, since a living trust never becomes pub-

lic knowledge (as does a will). For example, when Bing Crosby died in 1977, nobody learned the exact extent of his vast wealth or who received title to all his realty holdings. Another advantage, if you own real estate more than one state, is that probate proceedings are not needed for out-of-state properties that have been deeded into your living trust. As explained earlier, avoidance of appointment of conservator or guardian is another advantage, if you become incompetent.

Disadvantages

The cost of creating a simple living trust is usually less than \$1,000. Be sure to hire an attorney who specializes in trusts and estates. He or she should quote you a flat fee that includes transferring major assets such as your home and other real estate, into your living trust. Stocks, bonds, mutual funds and bank accounts should also be transferred into the living trust.

If you refinance your real estate, some ignorant lenders will insist you temporarily transfer property title out of the living trust while the loan documents are signed. After that, title can be transferred back into your living trust. But progressive lenders allow refinancing by the living trust trustee.

SUMMARY. The best way to hold title to real estate, to avoid probate costs and delays, is the living trust. Advantages far outweigh the disadvantages.

More details are in the special report "How Living Trusts Eliminate Probate Costs and Delays" available for \$4 from Robert Bruss, 251 Park Road, Burlingame, CA 94010. Credit card orders are welcome at (800) 736-1736.