



LITTLE-KNOWN SECOND ADVANTAGE OF A REAL ESTATE LIVING TRUST

Caring for an incapacitated loved one

The elderly widowed mother of a good friend recently suffered a severe stroke. He tells me she has become incapacitated, unable to speak or communicate. She is now in a convalescent home at a monthly cost of roughly \$5,000. But her doctor told the son she could remain like this for many years with little hope for recovery.

The son is unable to pay for his mother's care and Medicare does not cover such costs. Then I asked if there was a big mortgage on her house. He reported it is free and clear.

Next, I asked how title is held. "It's in her living trust," he reported. Finally, I asked, "Who is the successor trustee of that living trust?" "I am," he replied.

"Well, what are you worried about? When your mother runs out of cash resources to pay for her convalescent home care, as successor trustee you can sell her home and use the proceeds to pay for her care," I explained.

"But I thought the living trust was to avoid probate when the homeowner dies," he responded. "You are correct," I confirmed. Then I explained there is another little known and often extremely important secondary advantage of holding real estate titles in living trusts.

THE LITTLE KNOWN SECOND ADVANTAGE OF HOLDING TITLE IN A LIVING TRUST. Most homeowners know the primary advantage of holding title to their residence and other real estate in their living trust is to avoid probate costs and delays for their heirs when they die.

After a living trust is created, the principal or trustor usually transfers title to his/her home, investment realty, bank accounts, stocks and bonds, and other major assets to a living trust. This

is called "funding the living trust."

While alive and competent, the trustor continues to manage his/her living trust assets just as before. For example, homeowners can sell or refinance their living trust property.

Upon death of the principal or trustor, the successor trustee distributes the living trust assets to the heirs according to the terms of the living trust. No probate court costs and delays are incurred. This is especially important when the deceased owned real estate in more than one state.

But the second living-trust advantage arises when the trustor becomes incapacitated, as determined by a physician. Then the successor trustee can make decisions regarding the living trust assets.

To illustrate, suppose husband and wife hold title to their residence in their joint living trust. Husband incurs Alzheimer's disease and eventually doesn't recognize his wife or children. Unable to care for him at home, the wife moves him to a convalescent home specializing in Alzheimer's care. Medicare does not pay for the expenses. The wife realizes it is best to sell their large home to pay for her husband's care. But her husband can't sign the deed.

Because their home's title was transferred into their joint living trust, this is not a problem. After her husband became incapacitated, as sole successor trustee the wife in our example can decide to sell their home to provide for her husband's care.

WHEN YOU DON'T NEED A LIVING TRUST. If you have a small amount of assets worth less than \$50,000, and are 100 percent certain you will never incur Alzheimer's disease or suffer a stroke, you probably don't need to hold title to your major assets in a living trust.

The reason is most states have probate exemption procedures for small estates and for assets left to a surviving spouse.

However, if you are a widow or widower leaving significant assets to your heirs according to your will, your situation might not be exempt from probate costs and delays. If you own real estate in more than one state, expensive probate proceedings are usually required in each state unless you hold those assets in your living trust.

LITTLE KNOWN LIVING-TRUST ADVANTAGES. Privacy is another living-trust advantage because the terms of a living trust don't become public knowledge, as does your will after you die.

For example, although Bing Crosby died in 1978, most of his assets were in his living trust, which never became public knowledge. A few states allow living-trust registration, but there is no penalty for failure to do so.

Nasty will contests are avoided if your major assets are in your living trust. For example, the late CBS-TV folksy personality Charles Kuralt's will left all his assets to his widow. But his Montana

mistress claimed his Montana property was left to her in a holographic handwritten will. In a very costly public lawsuit, the court ruled she was entitled to inherit his Montana property. This could have been avoided if Kuralt had a living trust that included his Montana property because living trusts are extremely difficult for outsiders to contest.

Because a living trust is revocable and can be changed at any time, it is very easy to amend. Equally important, a living trust has no effect on the trustor's tax breaks, such as the \$250,000 or \$500,000 principal-residence-sale tax break, homestead rights, and even tax-deferred real estate exchange benefits.

DISADVANTAGES OF LIVING TRUST. A perceived living-trust disadvantage is the cost. Although there are some excellent do-it-yourself living-trust books available in bookstores, if you have significant assets, hiring an attorney who specializes in living trusts is money well spent.

Costs vary widely. Some living-trust attorneys advertise \$395 basic fees for minimal service. Other attorneys include more complete services for \$1,000 to \$2,500 or more. However, be sure the title to your real estate and other major assets is transferred into your revocable living trust. A living trust without assets is worthless.

Whatever the cost to set up your living trust and "fund" it, those up-front costs will be far less than the cost of probating your will. Your heirs will be very grateful to you for avoiding probate costs and delays.

A perceived living-trust disadvantage occurs if you want to refinance your living trust asset, such as your home. Some unenlightened lenders refuse to accept your signature as trustee of your living trust. So they require you to take the title out of the living trust momentarily, sign the refinance documents, and then you can transfer the title back into your living trust.

LIVING-TRUST ALTERNATIVES. None of these alternatives solves the very real problem that occurs for many of us if we become incapacitated and unable to manage our assets. But the living-trust successor trustee can easily resolve such an issue.

Many married couples hold title to their major assets in joint tenancy with right of survivorship. This is an excellent solution to avoid probate when one spouse dies without first becoming incapacitated.

However, in a situation when one spouse becomes incapacitated, it may be necessary for the other spouse, a trusted friend, or public official such as the county guardian, to petition for court-appointment as conservator. A living trust avoids such problems.

"Payable upon death" checking and savings accounts are available in many states. Upon the primary account holder's death, the assets then go to the person named. But complications often develop if the person named dies before the account holder.

Some individuals grant a power of attorney to a trusted friend or offspring. That's fine while the principal or grantor is still alive and competent. But a power of attorney ceases to be effective

when the grantor dies or becomes incapacitated. A durable power of attorney for financial management helps, but won't allow the attorney-in-fact to distribute assets after death.

SUMMARY: A revocable living trust provides major benefits to avoid probate costs and delays, as well as providing property management decisions if the principal trustor becomes incapacitated. More details are in my special report, "Living Trust Pros and Cons for Avoiding Probate Costs and Delays for Your Heirs," available for \$4 from Robert Bruss, 251 Park Road, Burlingame, CA 94010 or by credit card at 1-800-736-1736 or instant Internet download at www.bobbruss.com.