

November 20, 2005

## The Pros and Cons of a Living Trust

By [JAY ROMANO](#)

THE use of a revocable living trust is often touted as a way to avoid the time and expense of probate - and, by some, as a way to lower taxes - when leaving a house and other property to heirs. But does a living trust live up to its promise?

"For most people, there is probably no reason to make a revocable living trust," said Ralph Engel, a Manhattan trusts and estates lawyer. Mr. Engel said a living trust is a legal device - created by a document known as a trust agreement - that acts as a holding bin for property and other assets. Typically, he said, the trust takes title to a grantor's property and gives control to a trustee.

"In many living trusts, the grantor names himself the trustee," Mr. Engel said, adding that the trust agreement also specifies what happens to the assets on the grantor's death.

But does creating a living trust avoid probate? "Sometimes," Mr. Engel said.

He said that when property is transferred to heirs using a will, the will is generally subject to probate. "Probate is a proceeding in which a judge declares a will to be valid and appoints the individual responsible for handling the administration of the estate," Mr. Engel said.

By law, however, certain property, like life insurance with a named beneficiary, is not subject to probate. An asset in a trust, he said, is that kind of property. So, he said, if all of a person's assets are in a living trust, they pass to beneficiaries without being subject to probate.

While that might sound good at first, Mr. Engel said, two issues should be considered. First, the individual creating the trust must be diligent in transferring title to all assets to the trust, including those currently owned in his or her name as well as those obtained in the future. Any assets not specifically owned by the trust, he said, could be subject to probate, undermining the reason for creating it in the first place.

Second, he said, in the vast majority of cases, probate isn't nearly as expensive, complicated or time-consuming as most people think. "Unless there are problems with the estate, the probate process typically takes only a few weeks," he said, noting that New York, New Jersey and Connecticut have fairly uncomplicated probate procedures.

What about saving taxes? "Although literature and advertisements promoting living trusts sometimes state they can save taxes, in fact, they save no taxes at all compared to an estate plan in an appropriately drafted will," he said. He explained that since a living trust is revocable - it can be dissolved at any time by the grantor - its assets receive no special treatment for tax purposes, either while the grantor is alive or after death.

Jonathan Forster, an estate-planning lawyer in Washington, said that while revocable living trusts are not necessary for most people, they might make sense sometimes. For example, he said, people with property in two or more states might want to put it into a living trust to avoid going through probate in multiple jurisdictions.

Also, he said, probate is governed by state law, and some states, like California and Maryland, have fairly complicated probate laws, making property in such states good candidates for a living trust.

Other states, like Florida, have restrictions on who can serve as a personal representative of a decedent when putting an estate through probate, a factor that may make a living trust appropriate for property there.

Since probate is a court proceeding open to the public, those who want to keep their affairs private may want to place assets in a living trust, which, in most states, is not subject to public scrutiny. "If you own property in only one state, and don't have any of those special circumstances, going through probate isn't going to be the end of the world," he said. "A well-drafted will is probably all you're going to need."