

HOW A TRUST CAN BEAT A WILL

For one thing, a **living trust is harder to contest. That means you can prevent problems before you're out of the picture.**

When your soul finally slips over the Great Divide, will your worldly goods pass equally smoothly to your heirs? If you have an up-to-date will, you have every reason to believe the answer is yes—eventually. That is, as long as no disgruntled family members contest the will. If you're not okay with that answer, you may be ready to join the growing number of Americans replacing their wills with revocable living trusts.

While there are no definitive statistics on the number of trusts in effect, estate attorneys say they are drafting up to three times as many as they did a decade ago. It's not hard to see why. Trusts protect your privacy, they're much harder than wills to contest, and—most important—they allow you to bypass probate, the often tedious process during which a court approves your will and oversees its execution.

For all their genuine benefits, however, trusts aren't panaceas. Trusts can't, for example, cut your estate or income taxes or hide your assets from creditors. Establishing one costs about twice as much as drawing up a comparable will (about \$500 to \$3,500 depending on the complexity of your estate, according to Gideon Rothschild, a trusts and estates attorney at Siller Wilk in New York City). Moreover, to put a trust into effect, you have to transfer title to virtually all your possessions—a time-consuming and sometimes tricky project that's not worth the effort for every estate.

Experts say a revocable living trust is most likely to make sense for you if:

- You live in a state such as California, where probating even a modest estate routinely takes more than a year.
- You own real estate in states other than the one in which you reside, and your will would have to go through probate in each one of those states.
- You suspect that a member of your family might contest your will.
- You worry that serious illness might interfere with your ability to manage your financial affairs.

Once your lawyer drafts the documents that establish the trust, you transfer ownership of all your assets to it while you are still alive. (That's why it's a "living" trust.) You can be your own trustee, manage the assets and receive income from the trust until you die. The "revocable" part of the deal comes from the fact that you can change, amend or even dissolve the trust during your lifetime. As a result, you never give up control of your belongings. The flip side, however, is that you must still pay taxes just as if the assets had remained in your own name.

The living trust has its biggest payoff after you die. At that point, a successor trustee, named by you, parcels out the goodies to the beneficiaries. Because the trust—and not you—owns your property, there are no assets to go through probate. As a result, the bequests can be distributed as soon as your debts and taxes have been paid. This means your heirs get most of their assets within weeks and potentially avoid tens of thousands of dollars in administrative costs.

A revocable living trust may also safeguard your privacy. A trust rarely becomes public record, where-



as your will can be read by any enterprising neighbor who cares to look it up at the probate court. Moreover, all immediate family members—named in the will or not—are usually notified when a will is being probated. They then customarily have 90 days to challenge it. But there is no requirement to let anyone who is not mentioned in the trust know that it is being distributed. An unnamed heir who finds out about it could still challenge the trust, but it might be difficult for him to succeed, says Jeffrey Baskies, an attorney with Ruden McClosky Smith Schuster & Russell in Fort Lauderdale, Fla. “Your active funding and managing of the trust provides a record that you wanted it to exist.”

If you worry that an illness may one day impair your ability to manage your money, a revocable living trust offers further peace of mind. Without a trust, if you were disabled by a stroke or Alzheimer’s and had not drafted a durable power of attorney spelling out your wishes, a court-appointed guardian would have to handle your financial affairs. With a trust, however, your successor trustee could automatically take over for you under whatever conditions you spelled out in the trust.

Unlike a will, a trust does require considerable follow-up on your part. To get the most from your trust, follow these steps:

TAKE INVENTORY. If you forget to include any assets in the trust, they will go through probate, thus defeating the purpose of the trust. Therefore, you should make a list of all of your belongings, then meet with your lawyer and discuss what should and should not be part of the trust.

WRITE SEPARATE ASSIGNMENT LETTERS FOR FINANCIAL ASSETS. Your lawyer should have all the form letters you need to send to each brokerage firm, mutual fund company and bank where you have accounts. But whatever you do, never use a so-called global-assignment form letter that you fill out once and copy to all the firms. You have to list all your accounts in such a letter, thereby letting everyone know what you’ve got and where it is. One reason you’re setting up the trust is privacy, remember?

RETITLE THE DEED TO YOUR HOUSE. If you own a home, you will have to get a new deed—your lawyer will charge about \$200 to draft it—and change the owner of your home to the trust. Unfortunately, new ownership could cause some problems if you later decide to refinance your house. Banks and title companies occasionally balk at lending on a home owned by a trust because they don’t understand that the place is still owner-occupied. If your bank is unwilling, you may have to shop around for other lenders or retitle the deed in your name, and then retitle it back when you are finished.

DO NOT TRANSFER PENSION PLANS TO YOUR TRUST. Like insurance, these assets also pass to their beneficiaries without going through probate. Moreover, a trust cannot legally own individual retirement accounts or profit-sharing plans, 401(k)s and most annuities. Because the law states that the owner of a tax-deferred plan must remain the owner until the assets are taken out, if you transfer title, the IRS will view that as a distribution. Depending on your age and tax situation, you could wind up triggering some hefty tax penalties.

HAVE A POUR-OVER WILL. This will scoop up any assets not in the trust at the time of your death and deposit them there. Then relax, secure in the knowledge you have done what you can—complicated though it may be—to mind your own business. ■