Comprehensive Wealth Management
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Personal Finance: Living Trusts

Managing assets for immediate and long-term benefit

By: Robert Farmer

A Living Trust helps you control the management of your assets during your lifetime and beyond. To establish a Living Trust, you as grantor and your attorney draft an agreement that specifies:

- The purpose of the trust agreement
- The assets to be placed in trust
- Your instructions for asset management and distribution
- How, when, and under what conditions each of your beneficiaries will receive the assets of the trust
- The person or institution to serve as the trustee managing the assets in accordance with the provisions of your trust agreement
- The person or institution to serve as the trustee once you:
    - have passed away
    - are no longer able to serve as trustee
    - no longer want to serve as trustee
- The person or institution to serve as investment manager of the assets in the trust
- Whether the trust is revocable or irrevocable
- The initial state laws to govern the trust (the situs of the trust)
- Many other options

The typical Living Trust is created to provide a tax-efficient, cost-effective, and smooth transfer of a family's wealth from one generation to the next. It will state the amount, the timing, and the conditions under which the children (and other beneficiaries) will receive your assets after your death.

Revocable vs. Irrevocable

In the trust agreement, you specify whether your trust is revocable or irrevocable. Most of the decision regarding revocability will be driven by the purpose of the trust and taxation issues.

Revocable Trusts

A Revocable Living Trust lets you reserve the right to change or revoke the trust agreement to accommodate your needs as they change throughout your life. For instance, a major family event—marriage, birth, adoption, death, divorce—may prompt you to consider changing the provisions of your trust. In the typical Living Trust upon the death of the first spouse, part of the trust becomes irrevocable and part of the trust remains revocable. At the death of the surviving spouse, the revocable trust becomes irrevocable.

Irrevocable Trusts
Once established, an Irrevocable Trust cannot be amended or terminated. Irrevocable trusts are typically drafted and funded to permanently remove assets from the grantor's control. Usually this is done for tax or asset protection purposes. The grantor should seek counsel before funding an irrevocable trust.

Inherent Advantages of Living Trusts

Special Provisions
Your Living Trust can be fashioned to satisfy a variety of purposes. For instance, your trust might include provisions to:

- Care for any number of beneficiaries, including yourself
- Provide income to your spouse for life, with the remainder of the trusts assets to be distributed to your heirs upon your spouses death
- Provide for your children's education or marriage
- Distribute assets in stages to beneficiaries (for example, upon the 25th, 30th, & 35th birthday of each child)
- Assure the care of a disabled or elderly dependent such as your spouse, a parent, or an adult child with special needs
- Authorize discretionary distributions in the event of urgent, unforeseen need
- Furnish a legacy to a favored charity

Continuity of Management
A Living Trust protects your rights and interests in the event that you become physically or mentally incapacitated. Without a Living Trust, if you become incompetent the law requires that you and your assets—including your business, residence, and investments—be placed in the care of the court. The court would then appoint an individual to manage your affairs. Through this individual, the court would retain control until you could prove your competency or until your death, when your Will would take effect.

By contrast, with a Living Trust there is no change in the management of your assets, despite any change in your health. Should you fall ill your trustee simply continues in that role, administering your assets and assuring your well-being as your trust agreement specifies. Your trustee pays personal and household bills, medical expenses, and taxes, and oversees other financial affairs for as long as necessary. Upon your death, the trustee pays your debts and distributes your assets as you have instructed in your trust agreement. If instructed, the trustee also has the benefit of being able to continue to work with your other trusted advisors who know you best including your CPA, attorney, and financial advisor.

Familiarity
A Living Trust allows your advisors (CPA, attorney, financial advisor, etc.) to become familiar with you and your family throughout your lifetime. By maintaining long-term relationships with

you and your family, your advisors are better able to work to support the surviving spouse and your family at the passing of the first spouse. At the time of final distribution, your loved ones, the trustee, and your other advisors will have become well-acquainted. Such familiarity can be most reassuring.

Probate Avoidance
When an estate is conveyed through a Will, the probate court must validate the Will before its provisions can be executed. The probate process can require up to two years. Assets held in a Living Trust, however, are not subject to probate. The advantages of avoiding probate are several.

- Expedited Distribution. A Living Trust allows assets to be distributed to your heirs as quickly as your trust agreement instructs and the taxing authorities allow, without the additional delays of probate. Your spouse, for instance, could receive income to provide for living expenses immediately.
- Expense Reduction. The expenses of probate are completely avoided for all assets held in your Living Trust.
- Privacy and Confidentiality. When a Will is entered into probate, all of its provisions become a matter of public record. Since a Living Trust is a private arrangement, its terms are not made public at your death. Your assets and intentions are known only to your trustee and beneficiaries.

Resistance to Challenge
A Living Trust may be more resistant to estate challenge than a Will. It is difficult to challenge the validity of a trust that was established properly and operated successfully during one's lifetime.

Continuing Validity
Many people are surprised to find that their Wills can become less effective when they relocate to another state or country. A Living Trust maintains its validity no matter where you choose to reside.

Potential Advantages
With proper planning, a Living Trust can be drafted to deliver the following additional advantages.

Tax Minimization
Depending on your tax bracket, Federal estate taxes can claim up to 55% of your estate before applicable state taxes. Your tax advisor and financial advisor can help you structure your trust to potentially reduce this burden. For instance, for a married couple, terms could be written to minimize overall estate tax liabilities by dividing assets into separate trusts. Request an estate planning review from your financial advisor for additional detail.

Professional Investment Management
Unlike a Will, a Living Trust can assure that your assets are managed to meet your lifetime income needs and wealth perpetuation goals. Typically, the grantor will not need to make any changes to his/her investment management process. Existing accounts with financial advisors, brokers, and banks can be left where they are. The only changes will be changes to the titling of the accounts. Accounts that were once in the name of "John and Mary Smith" will now be in the name of the "John and Mary Smith Living Trust." You will need to notify your financial advisor of your changes once you have funded the trusts.

Professional vs. Personal Successor Trustee

After you or your spouse no longer serve as trustee, a successor trustee will serve as the trustee over the management of the trust. This person can be a professional trustee or a personal friend.

Personal Friend
If a personal friend is selected, this person must be someone who can be trusted; and they should be someone who has a broad background in legal, financial, and tax matters. When a personal friend is used, the successor trustee should also be required to:

- Put up a bond while serving
- Provide an annual accounting to the courts and all beneficiaries
- Continue to use your existing team of advisors

These safeguards steps will assist in protecting your assets, and they will enable your successor trustee to benefit from the same professional advice you enjoyed. Because many estate plans can be quite complex, retaining the original advisory team will also bring continuity to the plan and reduce administrative costs to the trust. Many grantors do not have personal friends interested in or capable of serving as a successor trustee.

Professional Trustee
The professional trustee (i.e. professional fiduciary) may be private professional fiduciary, a bank, or a trust company. Private professional fiduciaries usually allow your existing advisors to remain in place once you are deceased or unable to serve as your own trustee. Even so, it is advisable to state your preference of retaining your existing advisors in the trust. This ensures that those advisors who have known you longest and who have existing relationships with your spouse and heirs will remain as a part of your team once you no longer serve as trustee. Banks and trust companies can also retain the services of your advisory team. Here again, they should be instructed to do so in the trust.

Steps to Create a Living Trust

Establishing a Living Trust is a deliberate process. Following is a summary of the steps involved. Your tax advisor, attorney, and financial advisor will guide you through the various tasks associated with each step.

Select an Attorney
It is important to identify an attorney with experience in estate planning, specifically in establishing Living Trusts. The Resource Group can suggest a number of qualified attorneys for your consideration.

Consult Your Attorney and Tax Advisor
You must determine whether a Living Trust meets your needs, and how it could best be structured to minimize estate taxes.

Identify Assets
Determine the assets that you wish to place in trust. Segregate assets that you hold personally from those held in joint tenancy. For purposes of probate avoidance, it is important that as many personal assets as possible be placed in trust.

Specify Lifetime Management Needs
Decide how you wish the assets to be managed during your lifetime. Consider your current income needs and growth objectives.

Specify Beneficiaries and Distribution
Identify the individuals and charitable concerns to whom the trust is to make distributions after your death.

Specify Your Advisory Team
Identify the individuals or firms you want to serve the trust in the event of your death or incapacity. These individuals should be those most familiar with the formulation and implementation of your estate planning. They should also be those with whom your spouse and heirs have relationships.

Select a Trustee and Successor Trustee
In a revocable Living Trust, the trustee will normally be you. In an irrevocable trust, you might elect to name an individual and a professional fiduciary to serve as co-trustees. The successor trustee should be an individual or professional fiduciary to administer your assets during and beyond your lifetime. You also should name more than one successor trustees in the event of the original successor trustee's resignation, unsuitability, incapacity, or demise.

Draft Your Trust Agreement
Work with your attorney to draft a document that achieves your estate-planning objectives and reflects your personal intentions. File a copy with your trustee, successor trustee, and financial advisor. A typical revocable trust agreement would cover, among others, the following points.

- Designation of the trustee.
- A statement of the investment powers granted to the trustee.
- Instructions for payment of income and principal during the grantor's lifetime and for distribution of assets thereafter.

- Instructions for the trustee to maintain records of the trust's income, disbursements, and principal transactions.
- The ability to change situs, and a mechanism for doing so.
- Specification of any additional responsibilities assigned to the trustee.
- Instructions to the trustee to retain the services of your existing advisory team.
- A statement of the terms under which the trust agreement may be amended or revoked. (To be effective, any amendment or revocation should be placed in writing and filed with the trustee.)
- Designation of a successor trustee.

Fund Your Trust
Change the legal title of your specified assets from your name to that of your trust. Your attorney will help ensure that all assets are properly re-registered. If applicable, remember to:

- List all unregistered (bearer) securities on a separate schedule, and assign them to the trust
- Change the beneficiary of life insurance policies to the name of the trust or to be consistent with your comprehensive estate plan
- Convey real estate to be held in trust to the trustee
- Deliver all certificates and evidences of ownership to the trustee
- Attach a schedule of assets to the trust agreement

Expense and Effort
Your attorney will, of course, charge a fee for drafting your trust agreement, and may charge additional fees for arranging asset transfers and counseling family members. Once the trust is established, it is wise to consult periodically with your attorney, tax advisor, and financial advisor to ensure that your estate plan and tax strategies remain up to date.

How to Find out More
If you would like additional information on Living Trusts, contact Comprehensive Wealth Management at 818-237-5589. You can also find more information and reach us at www.ComprehensiveWealthManagement.com.

Please note that the information contained herein should not be construed as legal or tax advice concerning your unique situation. Please contact your legal or tax professional.

Biography and Compliance

About the Author
Robert Farmer is the President and CEO of Comprehensive Wealth Management in Burbank, California. He holds the FINRA Series 6, 7, 24, 63, & 66 securities registrations with LPL Financial. Since 1987, Bob has been providing investment services to clients. His experiences in trust services, investment management, estate planning, planned giving, retirement planning, real estate, and insurance make him qualified to assist clients, businesses, and professionals with a broad range of financial strategies.

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