

LEGAL EASE



Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

April 15, 2018

What is a revocable or living trust and do I need one?

In estate planning, the word “trust” refers to several different types of planning tools. Lawyers use trusts to protect minors who might inherit from parents or grandparents before they are of age, to protect public benefits of the disabled beneficiaries, to prevent an adult who cannot manage funds from himself or herself, or to protect assets if Medicaid is needed for long term care, to name a few examples. Trusts can be labeled “revocable” or “irrevocable” depending on the intended beneficiaries and the purpose behind the trust. The type of trust that I am asked about most often is a “revocable” or living trust.” There is a lot of talk about such trusts but often limited understanding.

A living trust is a Will substitute. Some people purchased living trusts from salesman who often made the “pitch” for these at free dinners, luncheons, or at churches. They often come in a binder, and although the documents within were developed by an attorney, the settlors never met with that attorney to have the documents explained. Other people had a trust written by an attorney with a full explanation of the trust documents and how they work. Those with living trusts talk with friends and family who then question whether they need such a document. Each situation is different so it is important to speak with your attorney as to your needs. However, in general, some things are true about living trusts that might help you to know if you should have a living trust or if a Will is sufficient.

Living or revocable trusts can be revoked at any time by the persons who “settled” the trust. Depending upon the wording of the trust document, if a husband and wife are settlors of a living trust, and one dies, the portion of the trust belonging to the spouse who passes away can become irrevocable and cannot be changed. Generally, a tax ID number is not necessary as the settlors or owners of the trust use their personal Social Security numbers as the tax ID number for income tax purposes. However, this can vary upon each individual situation. In order to have a living trust work properly, everything the person or persons owns, such as the house, vehicles, other real estate, bank accounts, brokerage accounts, boats, etc. should be titled in the name of the trust. For some people, this can become an ordeal, to keep updating accounts and property. For others, who did not have the workings of a living trust properly explained, often nothing or perhaps only the real estate is transferred into the trust. Having the primary residence of a husband and wife in a living trust can be an issue if one of them enters a nursing home and the trust owns the real estate. The house which under most circumstances could have been protected for the spouse who stays home now becomes an available asset that can be “tapped” to pay for nursing home care.

In Pennsylvania, where probate is easy and relatively inexpensive, a living trust is often not necessary and a properly drafted Will is more than sufficient. Additionally, if everything the decedent owned was not titled in the name of the trust, probate may still be necessary. Avoiding probate is the only advantage to most living trusts in Pennsylvania. Assets in a living trust in Pennsylvania are still subject to inheritance tax. However, there are other states in which a living trust is a better estate planning technique, such as Florida and California. In Pennsylvania, a living trust can be a good vehicle for persons who own real estate in other states, have extensive art collections, or are extremely wealthy and wish to shelter some assets. Consult your attorney for advice on whether a living trust, either one in place or one you are considering, is the correct choice for you.