Living Trusts

Managing Assets During and After Your Lifetime

A living ("inter vivos") trust is a way to structure ownership of your assets in such a way that they can be managed and distributed, both during your lifetime and upon your death, without using a court probate process. Living trusts can be revocable or irrevocable. A trust maker (or trust "grantor," "settlor" or "donor") is the individual who decides upon the terms that will govern the trust, signs the document establishing the trust, and then places his or her own assets into the newly established trust. The "trustee" is the individual or entity that manages trust assets, and the "beneficiary" is who the funds are used for; in the case of a revocable trust, the trust maker, trustee and beneficiary generally are the same individual. With a revocable trust, you can change the terms of the trust or revoke it entirely. For a trust to avoid the probate process successfully, assets currently titled in your individual name must be retitled into the name of the trustee of the trust. By retitling assets into the name of the trustee of a trust, the trustee becomes the "owner," and upon your death, assets are not titled in your individual name thus avoid the probate process. A successor trustee would take over the management and distribution of the trust estate according to your wishes as outlined in the trust document. An irrevocable trust differs from a revocable trust in one key aspect – the grantor does not retain the authority to change the terms of the trust. Moreover, while assets under a revocable trust remain under the control of the grantor, in an irrevocable trust, control often must be vested in a separate trustee (or a co-trustee must serve to control certain decisions) in order to accomplish desired results, such as creditor protection, estate tax planning or Medicaid eligibility. This means any changes to the irrevocable trust after its creation, including who serves as trustee, requires a specific procedure authorized under the trust terms or under state law, which may mean prior approval of others, including the beneficiaries. Because irrevocable trusts serve a variety of planning purposes, the design of the trust itself must be thoroughly considered in advance, and the specific terms must be carefully tailored to accomplish the specific objective. Once the trust is created, it also must be strictly administered to avoid unintended consequences. It is important to consider your particular circumstances as well as your financial and asset picture carefully before making any decisions on what type of trust you need and how to structure it.

Members

- Alisha E.A. Cahall
- Ann N. Butenhof
- Judith L. Bomster