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Is a Living Trust Right for You?

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- **A living trust eliminates probate.** A living trust eliminates probate of all assets owned by the trust at the time of the Settlor's death. If a client owns real property in more than one state, a living trust eliminates multiple probates. Almost without fail, though, there are assets owned outside the trust that need to go through probate. This is true even if those assets are being "poured over" into the trust. It is the probate process that causes the will to pour the assets that are individually owned to the trust at the time of death of the Trustmaker.
- **Probate is expensive and slow.** In some states and for some estates it is. On the other hand, in most states probate is relatively inexpensive and streamlined, particularly for smaller estates.
- **Living trusts are cheaper and faster than probate.** Maybe, if you practice in a state with expensive court costs and long delays, living trusts may be cheaper and faster. In many cases however, the successor trustees will still require assistance to administer the trust-marshall assets and pay taxes as directed, thereby incurring costs. In addition, the initial cost of setting up the trust and transferring assets must be considered.
- **Probate is a matter of public record; living trusts are private.** Unless your client has unusual family or financial circumstances that he would prefer to keep confidential, the fact that probate involves "public records" is unlikely to be a significant concern.
- **A living trust does not reduce or eliminate federal estate taxes.** Competent tax and estate planning is what reduces or eliminates federal estate taxes. The planner has a variety of options besides use of a living trust to accomplish his objectives, including effective use of the unified credit for gift and estate tax, the marital deduction, and lifetime gifting.
- **A living trust is tax neutral while Settlor is alive.** As far as federal income tax goes, and likely true for state income tax in all states. A caveat, though, if real property is transferred into the trust, make sure the transfer does not trigger a realty transfer tax or cause loss of the Homestead Exemption or Save Our Homes exemption.
- **A living trust avoids a guardianship proceeding if the Settlor becomes incapacitated.** The Settlor can appoint a successor trustee to manage his personal and financial affairs if he or she becomes disabled. A client could accomplish the same thing with a durable or springing power of attorney, but the living trust serves the multiple purposes of a Will and Durable Power of Attorney for finances.

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