Revocable Living Trusts Become Popular Option in Estate Planning

YOUR
MONEY
MATTERS

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When John Tapp's father died four years ago, he left a will and complicated business affairs that went through probate. "It was a mess," Mr. Tapp says. Estate taxes and probate fees were hefty.

After that, Mr. Tapp and his wife, Linda, both 42-year-old accountants in San Gabriel, Calif., placed all their assets in a revocable living trust. Says Mr. Tapp, "Our two children will end up with more money and fewer headaches."

More and more Americans are doing what the Tapps did -- putting their assets in revocable living trusts. In such a plan, titles to real estate, securities and other assets are placed in a trust while the owner is still alive. The trust document outlines instructions for managing the assets and distributing them after the individual's death. The people who create the trust can act as their own trustees, so there are no management fees or loss of control. They can change the trust at any time.

The advantages of living trusts over wills are considerable. Under a will, an estate must be settled in probate court. Lawyers's fees and court costs often are substantial; there may be exasperating delays, and the proceedings are a matter of public record. In contrast, a living trust is settled without a court proceeding; a successor trustee simply distributes assets according to the trust's instructions, with an accountant, notary public or lawyer certifying any transfer of titles. The process is much quicker, cheaper and more private than settling a will, and it may save on estate taxes.

Trusts can be contested, but not as easily as contesting a will. When an estate goes to probate in California, the court freezes its assets for four months and asks anyone to come forward and contest the will if they please. Someone contesting a will doesn't even need to hire a lawyer.

But to contest a trust, a disgruntled heir needs to hire a lawyer and file a civil suit. The assets of a living trust aren't frozen, however, and the trustee can distribute them to the beneficiaries immediately. The disgruntled heir then would have to sue each beneficiary.

Flexibility and Savings

Many other kinds of trusts are used for estate planning, but the revocable living trust is growing in popularity. An irrevocable living trust offers the same advantages of avoiding probate and perhaps saving on estate taxes, but causes problems because it can't be changed, lawyers say. A testamentary trust, created after death, must go through probate.

"(Revocable) living trusts have become the preeminent modern estate-planning tool," says Lynn Hopewell, a Falls Church, VA., financial planner.

Disadvantages of revocable living trusts are relatively few, estate planners say. But there are some, including the hassles of transferring the titles to homes and other property, bank accounts, securities, businesses and other investments into the name of the trust. Legal fees for setting up a trust range from $700 to $1,800.

For a home refinancing, some lenders demand that the house title be taken out of a living trust. Lawyers say some institutions that buy mortgages in the secondary market from thrifts and banks won't buy mortgages in the name of a trust, because they fear that some irrevocable trusts may have stipulations preventing a trustee from selling the property. After the refinancing is completed, the home can be transferred back to the trust.

The living trust business is booming -- especially in California, where several law firms have sprung up specializing in living trusts. Targeting people age 55 and over, they give seminars at retirement clubs of corporations. Bezaire, Bezaire, Bezaire, & Bezaire, San Marino, Calif., says it has set up 4,000 living trusts in the past four years. Robert Armstrong, a San Diego attorney, says his firm has completed 2,000 living trusts in the past five years. A Glendale, Calif., investment club even offers seminars at which members, aided by a trust attorney, fill out trust documents for $325 each.

But many lawyers don't go out of their way to tell clients about living trusts, says Maria Bezaire, a partner in the Bezaire law firm. Lawyers would rather write wills for $60 and then make a bundle

when the will is probated, she says.

Lawyers' probate court fees, as mandated by California law, average 4% to 7% of the gross value of an estate-- $6,300 for a $100,000 estate and $42,300 for a $1 million estate. (Average fees in the other states range from 3.8% in Utah to 11% in Alaska.) In addition, special fees are granted by a court for sales of assets during probate, preparation of estate tax returns and litigation costs. The average probate takes two years to complete in California.

In contrast, Bezaire & Bezaire charges 0.5% of the net value -- or value of the estate after debts are paid -- for terminating a living trust. People willing to settle a trust with a notary or accountant need not pay even that much, and the process can be completed in a matter of days.

Most married couples hold title to their house as joint tenants. Upon the death of the first spouse, the house doesn't have to pass through probate. But when the second spouse dies, unless he or she has place the home in joint tenancy with another person, the property will be probated. The same is true of bank accounts, stocks and other assets. A living trust is one way to avoid that problem.

It can also save on federal estate taxes. If a couple has a so-called A-B living trust, with separate trusts for the husband and wife, they can pass on up to $1.2 million tax-free to their children, trust attorneys say. Under this method, each trust can use the $600,000 federal estate-tax exemption, even if one spouse dies before the other; in that case the surviving spouse can draw on the other's trust, with certain restrictions; when the second dies, both trusts go to the children. Without the A-B plan, the children would pay $235,000 in federal taxes on a $1.2 million estate, Ms. Bezaire says.

'The Groucho Marx Problem'

A growing number of older Americans are putting their assets into living trusts because they want to avoid being placed under a court-appointed guardian if they become unable to manage their affairs. If a home or stock is in joint tenancy, a wife can't sell it if her husband has a stroke and isn't competent. So she must get the court to appoint her as conservator and then must keep scrupulous records.

A living trust "avoids the Groucho Marx problem," says W. Bailey Smith, a Newport Beach, Calif., lawyer who specializes in estate-tax planning. In his 80s, contrary to his desire, Mr. Marx was declared incompetent by a Los Angeles court. At the time, he was living with a woman named Erin Fleming, who said he preferred her as his guardian. After a messy court battle, though, a relative was appointed as his guardian. "With a living trust, he could have specified in advance whom he wanted to manage his affairs if he ever became incompetent," Mr. Smith says. A will can't be used for this kind of contingency.

Privacy is another argument for a living trust. "Anyone can go down to Los Angeles probate court and find out that Natalie Wood had a $6 million estate that included 29 fur coats," Mr. Smith says. If a living trust is contested, the barrier of privacy may be breached; otherwise, no details about beneficiaries or the estate enter the public record. Bing Crosby, for example, set up a living trust before he died in 1977, and "you can't find any public details" about his estate, Mr. Smith says.

THE COST OF PROBATE

California's probate fees -- set by law-- are about average among states. These fees to settle an estate in court don't include special fees for the sale of assets, tax preparation and litigation.

ASSETS	MINIMUM FEES
$ 200,000	$ 10,300
300,000	14,300
400,000	18,300
500,000	22,300
750,000	32,300
1,000,000	42,300
2,000,000	62,300
3,000,000	82,300
5,000,000	122,300

Source: W. Bailey Smith Inc.