



LIVING TRUSTS

COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.

Country Club Office Centre
39395 West Twelve Mile Road, Suite 200
Farmington Hills, Michigan 48331

248-489-8600

www.couzens.com
info@couzens.com

DEFINITION OF TRUSTS

A trust is an agreement to transfer assets to a trustee to be managed for the benefit of named beneficiaries or distributees. Trusts can be revocable (amendable) or irrevocable.

A Living Trust is a revocable trust set up by you during your lifetime. In most circumstances, the person setting up the trust (often called the settlor, grantor or creator) also serves as trustee, or property manager, during his or her lifetime. The typical Living Trust also names the settlor as the first beneficiary of the trust. The settlor controls all trust assets and retains the right to amend the document at any time.

BENEFITS OF A LIVING TRUST

PROBATE AVOIDANCE

Assets owned by or payable to a Living Trust are generally not subject to probate upon the incapacity or death of the settlor, trust beneficiaries or the trustee. If any of those events occur, the successors named in the trust have control without Probate Court involvement. This typically saves time, publicity and administrative expense.

MINIMIZING ESTATE TAXES

Living Trusts have been useful to minimize federal estate taxes, which have had rates of 55% or more. This tax is payable where the taxable estate exceeds the applicable exclusion amount for the year of death. The applicable exclusion amount and the tax rates have changed many times in recent years. Additional changes are expected. Care must be used to maximize planning opportunities and to keep planning up to date.

There is an unlimited estate tax deduction for charitable gifts and transfers between U.S. citizen spouses, so such transfers are tax free, no matter how large.

Married couples have used Living Trusts to obtain the use of two exclusions. The unused basic exclusion amount of the first spouse to die is now portable and can be transferred to the survivor without a trust. However, an election must be filed and there may be other disadvantages to this option.

PROPERTY MANAGEMENT

A Living Trust can provide management for any property now, upon incapacity or upon death. In this manner, family members, trusted associates or professional trustees can be named to invest and distribute your property when needed or desired.

RESTRICTING PROPERTY USE

A Living Trust may limit the control a surviving spouse has over property, yet still qualify for the marital deduction. Property has not been subject to federal estate tax because of the marital deduction with:

1. An outright gift to the spouse;
2. A trust providing the spouse gets all income and principal on demand;
3. A trust providing all income with a power to specify who inherits the property at the spouse's death;
4. A trust providing income as needed, with the trust property going to the spouse's estate at death;
5. A trust providing for a "qualified terminable interest"; or
6. A qualified domestic trust, which is required if the survivor is not a U.S. citizen.

Timed Distribution of Assets

A Living Trust can control the distribution of your assets to your beneficiaries. For example, distribution may be made to children as needed for support, education and similar stated purposes at any age, with the unused money kept in the trust to be distributed at ages you specify. Without such an arrangement, minors inheriting property through the probate process are entitled to receive a full distribution when they reach the age of majority. Discretionary distributions can also be

used to protect beneficiaries from creditors or from losing government assistance.

GENERATION SKIPPING

A Living Trust may provide a beneficiary with income or principal for life, with others getting the property at death. The Living Trust arrangement can help do this while minimizing any generation skipping tax.

CHARITABLE GIFT ARRANGEMENTS

A Living Trust is an ideal tool to use in making charitable gifts. Fixed dollar amounts or percentages are popular. Assets can also be managed by a trustee and distributed as you specify to named beneficiaries for their lifetime, with a charity receiving the assets when the beneficiaries have died or have reached specific ages. A charity is often named as the successor beneficiary if another beneficiary predeceases you.

COORDINATION WITH OTHER DOCUMENTS

Even with a Living Trust, several other documents are typically needed in a thorough estate plan. These include a pour-over Last Will and Testament, financial Durable Power of Attorney, Patient Advocate Designation with Living Will, HIPAA statement, Certificate of Trust and funding documents. Each of these items serves a special purpose.

WHO CAN USE A LIVING TRUST?

Whether a Living Trust would be of benefit depends upon your particular circumstances. You should consult your advisors before making a final decision. You should carefully consider establishing a Living Trust if any of the following apply to you:

- You wish to avoid probate, without the risks of joint ownership.
- You are married and your taxable estate may exceed the applicable exclusion amount.
- You wish to restrict the time when your beneficiaries will receive their inheritance.
- You have minor children.
- You want to specify who will manage your assets, and in what manner, upon your incapacity or death.
- You want a beneficiary to receive support only for life, with the property to pass to others, such as a charity, later.

WHAT SHOULD YOU DO NEXT?

Contact one of our attorneys to get additional information about living trusts and estate planning.

© 2016 Couzens Lansky

This publication does not attempt to give specific legal or tax advice. For advice in particular situations, the services of competent legal, tax or financial planning advisors should be obtained.