

# The Living Trust

## Is It For You?

■ BY GREGORY AND CLAUDE HAWKINS

**W**hat businessperson fails to write a will or purchase life insurance to protect expectant heirs? These are the basic building blocks of estate planning. Yet, in recent years, many estate planners are beginning to urge anyone who owns even a modest estate to consider something more, a revocable living trust: more powerful than the probate judge, able to leap disinherited relatives in a single bound, faster than a speeding IRS agent.

Living trusts (not to be confused with living wills) are being touted by the most respected of professionals. Bankers, lawyers and accountants praise their virtues.

Inevitably, a band of detractors has arisen, decrying the hoopla and branding the push to set up living trusts as over-

heirs according to your will.

While writing a will can be simple, probating one is not. The probate process takes from one to two years for uncomplicated cases. The cost for legal and executor fees can amount to 4 to 10 percent of the estate's gross value. Probate files also are open to the public so that anyone, including competitors, can see what you owned and who you owe.

During probate, all assets are frozen, and nothing can be sold or distributed without the court's approval. Should your family need money to live on, they must ask the court for a living allowance.

Living trusts make it difficult for someone to dispute your pre-death instructions. With a will, those who think they are due a piece of the estate are invited to step

affairs and property can be managed privately and effectively by your trustee, as you instructed before you became incompetent. Otherwise your family may be required to go to the expense and continuing headache of asking the court to supervise your life and property.

A living trust is extremely flexible. It's revocable, meaning you can terminate it at any time. Almost anyone can be named as trustee. If you are older or just want to get away from the bother of managing your property, you can name a trusted friend or relative. For a fee (usually a small fraction of what the trust's assets generate as income), many financial institutions will take over the management while remaining subject to your command.

A multitude of other specific needs can be addressed and resolved within the framework of a living trust. It can be crafted to delay inheritance until an irresponsible heir reaches a specified age or to provide ongoing support for a child with a disability. You can bypass children and provide for grandchildren, even those yet to be born.

The biggest monetary benefit to your heirs could be the federal estate tax savings. Opponents to the everybody-should-

have-a-living-trust philosophy debate this issue with a vengeance. They point out that an estate appraised at less than \$600,000 pays no federal estate taxes. True, but consider your

**Be it known, that I, being of sound mind, do hereby make and declare this to be my last will and testament. Expressly revoking all my prior wills and codicils at any time made**

Perhaps justifiably, they argue that living trusts are not for everyone.

Thankfully, both sides agree that the basic elements of a living trust are not difficult for the thinking layperson to understand. Essentially, a person or couple transfer all their assets to the trust—everything—home, vehicles, life insurance policies, personal property, etc. They retain nothing. Most often, they name themselves as trustee and exercise complete control.

Almost everyone acknowledges one of the primary advantages of such a trust—the avoidance of probate. Probate is the legal procedure through which a court assures that your debts are paid and the remaining assets are disbursed to your designated

forward and make a claim. With a trust, a disgruntled heir must hire a lawyer and file a civil suit against each beneficiary—an expensive deterrent. Because assets are distributed privately and quickly with a trust, unhappy relatives may not even know the distribution has taken place.

The benefits of a trust also cut across state boundaries. With a will, property must pass through probate in each state in which it is owned. All properties held in trust avoid probate no matter where they are owned.

Should you become disabled or incompetent, a living trust again proves its value. Rather than living your last days in conservatorship and guardianship, your

worth carefully before conceding this point. Six-figure homes and life insurance policies mount up quickly. And remember, the people who make the final assessment of value, the tax folks, may have a different idea of your worth than you do.

After \$600,000, federal estate taxes begin at 37 percent. On a \$1.2 million estate, that's \$255,000. For someone in this bracket, a properly drafted trust, known among estate planners as an A-B trust, may reduce the federal tax debt to zero. Upon your death two separate trusts are automatically created, taking advantage of the Unlimited Marital Deduction and the Unified Estate and Gift Tax Credit, protecting

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questions help you achieve your goal.

Scripting questions to discover horizontal information (hard data) is fairly easy. Because of the effort you put into developing a job description, you already know how much schooling or work experience you are seeking.

Ferretting out vertical information—the candidate's character and personality traits, how the person works, etc.—is more difficult and will ultimately determine who gets the job. Open-ended questions that call for subjective answers will serve the purpose best.

Candidates will have prepared answers for many stock questions—"Where do you want to be in five years?" And asking, "What would you do if..." may telegraph the type of answer you want. If your question suggests that you like aggressive people, you have relinquished the high ground. A smart applicant will try to convince you that he or she is aggressive, even if that is not the case.

Put a slight spin on the question. For example, "How would you counsel a fellow worker who is discouraged?" Even a small change of perspective, putting them in the position of counselor rather than how they would personally overcome discouragement, can help to crack their shell and give you a peek inside.

Follow with a second question. "Why would you advise them in this way?" There may be a slight pause as the applicant looks inside himself for the answer. Give him a moment because this is your opportunity to get a better look at his true nature.

This type of follow-up question also works well with hard data. If you structure it correctly, you can again slip past the groomed exterior and closer to the genuine person. "How did you increase sales by 27 percent?" Use words such as explain, review and describe.

Another reason to prepare questions before the interview is so that you can ask the same questions of each applicant. Unstructured questions will defy comparisons of the candidates when all the interviewing is finished. Almost as important in today's litigious atmosphere, prepared questions help you to avoid questions that can lead to charges of discrimination.

## LET THE APPLICANT TALK

An effective interviewer listens 80 percent of the time, but some authorities say it should be 90 percent of the time. Talking too much increases the likelihood of revealing what the interviewer wants. When too much time is spent selling the company or the position, not enough information is gleaned, and the interviewer must rely too heavily on impressions.

Discuss the company and the job at the end of the interview, when you know more about the candidate. Then you can tailor the information, and you may decide to add more or cut it short, depending on how the interview went. Interviewers who spend most of the time

speaking to prospective employees on each segment of the interview. Without notes, subtleties are lost and impressions loom. Notes also allow you to ask better questions when checking references.

## CHECK REFERENCES

At this point, you have a pretty good idea of the strengths and weaknesses of the candidates and you may not feel it necessary to check references. Further, you are probably tired, if not exhausted, by the whole process. Do it anyway.

Aside from the business benefits of properly conducting a reference check, the consequences of not taking "reasonable care" to verify references can prove disastrous. Should your employee com-

mit a felony or hurt someone, whether on the clock or not, if they have a history of such activity and gained access to the person or place because of their association with your company, you could be held liable. Awards range to six figures, and they are not uncommon.

## TRUST YOUR INTUITION

If the hiring game could be completely objective and logical, matching prospective employees with job slots would prove as simple as connecting the dots. No one has yet devised such a solution. The above-mentioned techniques will help you to quantify and make your selection process more consistent, but in the end, do not discount your intuition.

Intuition is the perception of truth without the benefit of reasoning or hard facts. However, intuition is usually based on experience or fact perceived at a subconscious level. Successful executives, managers and business owners all utilize it in the decision making process with powerful results.

Yes, you should do everything in your power to make the hiring process as systematic as possible. But you are a professional or you wouldn't be sitting in the big chair. In the final analysis, trust your experience and your intuition. ■

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**Some hiring methods and systems are so complex they require a computer to decipher the results. At the other extreme, managers who rely predominately on gut reaction are courting disaster.**

...talking tend to feel better about the interview than is justified.

## THE HALO EFFECT

Which brings us to the "Halo Effect." When not enough solid information is gathered—typical of the unstructured interview—decisions are made not because the person fits the job but because they fit the interviewer or because they look good. It's a sad fact that countless bad hiring decisions are made because managers tend to hire clones of themselves. Many interviewers make a decision in the first 6-8 minutes, on such things as smile, firm handshake or how they dress. The Halo Effect means that the manager hires "a nice person" rather than the "best person to do the job."

## TAKE NOTES

Don't sabotage all the hard work you have put into the process; take notes. Jot down the key points and quantitative data to ensure a more methodical comparison. Successful interviewers often rate the pro-