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Circle No. 8 on ACTIONCARD

## Where there's a will...

By Gregory P. Hawkins, J.D.  
& Claude T. Hawkins

**WHAT 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 professionals in their fields. Bankers, lawyers and accountants laud their virtues.

Inevitably, a band of detractors has arisen, decrying the hoopla and branding the push to set up living trusts as *oversell*. 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 transfers 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 the primary advantage of such a trust is the avoidance of probate. Probate is the legal procedure where the Court assures that your debts are paid and the remaining assets are disbursed to your designated 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 four to ten percent of the estate's gross value. Probate files are also open to the public so that anyone, including competitors, can see what you

owned and who you owed.

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 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 a court-supervised conservatorship and guardianship, your 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 hassle 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 every command.

## should there be a trust?

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## Where there's a will...

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 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 worth than you do now.

After \$600,000, federal estate taxes begin at 37% — a \$235,000 clip out of \$1.2 million. For those in this bracket a properly drafted trust, known among estate planners as an A-B trust, can 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 your assets up to \$1.2 million.

Does all this sound too good to be true? That is exactly the argument made by those who advise caution. No, they do not disagree with the benefits of a living trust but they contend that all the hype makes it sound like a general panacea — a cure-all for everyone.

In this life an intelligent person understands that there are only two cure-alls (both mythical) — winning the lottery and finding a brass lamp housing a generous genie. The latter is only slightly less likely than the former.

As a person in business you understand that success and security are generally products of conscientious study and careful implementation. Anything that falls into your lap or seems too good to be true must be challenged before being accepted. The same process should be employed when evaluating your need

for a living trust.

First consider money. To set up a living trust you must pay a lawyer to establish the trust, then pay the fees to transfer all your assets to the trust. Generally this is much cheaper than probate, from \$500 to \$1,500, although the cost can go much higher for extensive tax planning or a complicated plan. Keep in mind that probate comes out of your estate, after your death, and establishing a trust is "right now" money.

A trust does not remove the need for a will. Once established, a living trust is an ongoing process since a living person's estate is fluid. New properties must be added and frequently people forget something when they first establish the trust. A "pour-over" will is necessary to catch anything forgotten or left out. These assets will have to be probated.

You work hard to develop a desired standard of living for yourself and for the present and future security of your family and loved ones. Estate planning strives to fulfill these desires by considering every possibility, then providing whatever devices are necessary to insure success.

With so many eminent estate planners advocating living trusts as a way to preserve and pass on the fruits of a lifetime's effort, perhaps you should give serious thought to using a trust. Lawyers whose practices concentrate in estate planning usually charge nothing, or a minimal fee, for the first consultation.

Shopping around for the best price makes sense as long as you assure yourself of two things. Make sure that the attorney you choose is competent, with plenty of experience and a good reputation. And beware of those unable to communicate in simple, understandable terms.

Finally, business men and women are the world's preeminent do-it-yourself experts. To this end, books and kits are widely available; many are well written. However, keep in mind that a revocable living trust is not the cure for a leaky faucet and the results of a botched job will not be just a noisy drip to disturb your sleep. Be careful. Talk to a lawyer. ■

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