



Have A Living Trust? Make Sure It's "Funded"

Using effective Estate Planning strategies could prove to be one of your best overall investments. That's because your estate is everything you own, including the value of life insurance in most cases. One of the most effective tools families can use to properly plan their estate is the revocable living trust.

Trusts aren't just for the "rich and famous." Families of more modest means could benefit as well, provided they use it properly. Experience suggests that many revocable trusts are often "unfunded" after they've been drafted by the attorney and signed by the grantor (the person who creates the trust).

Funding the trust simply means assets are placed in the name of the trust. For example, if Bob and Mary Jones have a brokerage account in their names as joint tenants with rights of survival (JTWROS) they would need to have the account re-titled in the name of their trust(s). This isn't a big deal. It just requires some paperwork and follow-up.

Once a regular brokerage account is re-titled into the trust, it would look something like this:

The Bob Jones Revocable Trust, dated June 10, 2009, Bob and Mary Jones Trustees. This would place all the assets in this account in Bob's name. Mary should have her own separate trust with appropriate assets funding it in her name. This allows the full unified credit for estate tax exemption (currently \$3.5 million per person as of November 2009) to be used when each one dies. Note: the unified credit is scheduled to be unlimited next year before reverting back to \$1 million per person in 2011.

It's important to know that if assets aren't placed in individual names (whether a trust is used or not) and remain as JTWROS, then the unified credit of the first spouse to die is lost forever! And, if the unified credit does revert back to only \$1 million per person in 2011, it could be an important planning issue for many "middle class" households. Note: Qualified Retirement plans (IRA, 401(k), 403(b), etc.) should not be re-titled to the trust because that's a taxable event.

Properly funding a living trust provides a variety of benefits. First, it enables the Trustee (the person who manages the trust after the grantor dies or becomes incapacitated) to manage the funds for the benefit of the beneficiaries without going through the probate process. Probate is a legal process, administered by the local court, to ensure a decedent's estate is distributed properly. The court wants to make sure any debts they may have are paid before beneficiaries receive funds.

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Unfortunately, for the dearly departed and their family, probate is public. Anyone is able to obtain a copy of the decedent's will, which often lists bank accounts and brokerage statements, as well as the amount in each. And the amount each beneficiary receives may be listed as well! Some people don't care about this lack of privacy, but others find it intolerable. You can easily confirm this by going down to your local courthouse and asking to see recent wills. They'll even let you make copies and take them home if you like!

This is where the living trust really shines. Assets that have been placed in the name of the trust don't have to go through the probate process at all; it's completely private. In addition, unlike a will, funds can remain in the trust for the benefit of beneficiaries until they reach a certain age, or to protect them from predators or their own incompetence.

It's important to note that some attorneys include trust language inside a will. This is called a "testamentary trust" that doesn't become effective until after the estate has gone through the probate process. While it's better than no trust at all, it doesn't avoid the public nature of probate.

Of course this information is not intended to be "legal advice." You should always meet with a knowledgeable estate planning attorney for professional advice. Some basic estate planning now could pay big dividends for your family in the years to come.

The above material was prepared by PEAK.

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