

## How Can a Living Trust Help Me Control My Estate?

Living trusts enable you to control the distribution of your estate, and certain trusts may enable you to reduce or avoid many of the taxes and fees that will be imposed upon your death.

A trust is a legal arrangement under which one person, the trustee, controls property given by another person, the trustor, for the benefit of a third person, the beneficiary. When you establish a revocable living trust, you are allowed to be the trustor, the trustee, and the beneficiary of that trust.

When you set up a living trust, you transfer ownership of all the assets you'd like to place in the trust from yourself to the trust. Legally, you no longer own any of the assets in your trust. Your trust now owns these assets. But, as the trustee, you maintain complete control. You can buy or sell as you see fit. You can even give assets away.

Upon your death, assuming that you have transferred all your assets to the revocable trust, there isn't anything to probate because the assets are held in the trust. Therefore, properly established living trusts completely avoid probate. If you use a living trust, your estate will be available to your heirs upon your death, without any of the delays or expensive court proceedings that accompany the probate process.

There are some trust strategies that serve very specific estate needs. One of the most widely used is a living trust with an A-B provision. The purpose of an A-B trust (also called a "bypass trust") is to enable both spouses to use the applicable estate tax exemption upon their deaths, which shelters more assets from federal estate taxes.

Before enactment of the 2010 Tax Relief Act and the higher federal estate tax exemption (which increased to \$5.43 million in 2015 as a result of the American Taxpayer Relief Act of 2012), some estate planning was involved to ensure that both spouses could take full advantage of their combined estate tax exemptions. Typically, it involved creation of a bypass trust. Now that portability is permanent, it's possible for the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without creating a trust.

Even so, 19 states and the District of Columbia still have their own estate and/or inheritance taxes, many have exemptions of \$1 million or less, and only one (Hawaii) has a portability provision.<sup>1</sup> By

funding a bypass trust up to the state exemption amount, you could shelter the first spouse's exemption amount from the state estate tax.

Thus, an A-B trust may still be useful, not only to preserve the couple's state estate tax exemptions but also to shelter appreciation of assets placed in the trust, protect the assets from creditors, and benefit children from a previous marriage. In most cases, however, when couples have combined estate assets of \$10.86 million or less, they might be better off just leaving everything outright to each other.

A living trust with an A-B provision, also called a bypass trust, can help ensure that a couple takes full advantage of the estate tax exemption for both spouses. When the first spouse dies, two separate trusts are created. An amount of estate assets up to the applicable exemption amount is placed in the B trust. The balance is placed in the surviving spouse's A trust. This then creates two taxable entities, each of which is entitled to use the exemption.

The B trust is taxed. But because it doesn't exceed the estate tax exempted amount, no taxes will actually be paid. The surviving spouse retains complete control of the assets in the A trust. He or she can also receive income from the B trust and can even withdraw principal when needed for health, education, support, or maintenance.

Upon the death of the second spouse, only the A trust is subject to estate taxes because the B trust contained less than the exemption amount. If the assets in the A trust don't exceed the applicable exemption amount, no estate taxes are owed. At this point, both trusts terminate and the assets are distributed to the beneficiaries, completely avoiding probate.

While trusts offer numerous advantages, they incur upfront costs and ongoing administrative fees. The use of trusts involves a complex web of tax rules and regulations. You should consider the counsel of an experienced estate planning professional and your legal and tax advisers before implementing such strategies.

Source: 1) Forbes, September 11, 2014

The information in this article is not intended to be tax or legal advice, and it may not be relied on for the purpose of avoiding any federal tax penalties. You are encouraged to seek tax or legal advice from

an independent professional advisor. The content is derived from sources believed to be accurate. Neither the information presented nor any opinion expressed constitutes a solicitation for the purchase or sale of any security. This material was written and prepared by Emerald. © 2015 Emerald Connect, LLC