

WHAT IS A LIVING TRUST?

By Jane M. Winand, Chief, Legal Assistance Division

Periodically a client will ask me about living trusts. The client may have read about such trusts in a magazine or heard about them on TV. Some clients send away for a living trust kit and others attend seminars which end in the drafting of documents which may cost \$1,000 or more. Although the Legal Assistance Division does not draft living trusts, we provide estate-planning information to assist each of our clients in determining whether a living trust would be advisable.

There has been quite a bit of advertising about living trusts and their benefits. These ads often assert that such a trust will save the person a great deal of money while ensuring that the property goes to that person's beneficiaries. The implication is that unless you have a living trust, the courts and lawyers will whittle away at your estate in the probate process.

Most people fear the probate process because they don't understand it. These advertisements play on that fear. A careful review of an individual's family needs and finances is imperative before a decision can be made about which estate planning tool is appropriate for that person.

A trust is an arrangement by which one person (a trustee) holds title to an asset and manages it for the benefit of another (a beneficiary). The person who establishes the trust is generally known as a settlor. A trust in some form can be made to do almost anything the settlor could do for himself. Trusts can be used to carry out the settlor's wishes even after death. Some complex trusts can avoid estate taxes.

A will is effective only after death, but a trust in some form can be established during life to continue well after the death of the settlor. The trust, whatever its purposes, will have two characteristics: it will be either "revocable" or "irrevocable" and either "testamentary" or "living" (also known as "inter vivos", meaning during life). Revocable simply means that you have retained the power to revoke, or cancel the trust. If the trust is irrevocable, you cannot cancel it. A testamentary trust is created in an individual's will and takes effect upon that person's death. A living trust is created during the settlor's life and, if it is revocable, may be modified or canceled at the settlor's wish.

A common form of a living trust is one naming yourself as the trustee to monitor the property during your lifetime and naming the individual you wish to inherit the property as the alternate trustee. Then, at the time of your death, the assets listed in the trust will automatically come under the control of the alternate trustee, who can then convey the property to himself or other named beneficiaries. This transfer of property is also accomplished by probating a will. There is an additional expense involved in setting up a living trust, because deeds and other title documents must be prepared transferring all trust property to the trust. Estate taxes are not avoided through the use of such a trust.

The Legal Assistance Division drafts wills for and provides estate-planning information to all active duty and retired service members and their family members. The Legal Assistance Division Attorneys can advise you on the advantages of holding property in joint tenancy with the right of survivorship, a simple expedient that avoids probate without resorting to a living trust. Homes, automobiles, bank accounts and other assets that are held under such an arrangement are not included within a deceased person's estate for probate purposes.

Whether a living trust is appropriate for you is a matter you should decide after carefully reviewing your estate goals and desires with trusted professionals. The Fort Meade Legal

Assistance Attorneys can discuss the living trust and other estate planning tools with you. However, Fort Meade Legal Assistance Attorneys cannot draft a living trust for you. If you wish to discuss your estate planning concerns, you may call the Legal Assistance Division at (301) 677-9762 and make an appointment to speak with an attorney.