

5 COSTLY MISCONCEPTIONS ABOUT LIVING TRUSTS

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MISCONCEPTION # 1: Living Trust reduce or avoid taxes. **WRONG!** Living Trusts do not save estate, inheritance or income taxes. During the lifetime of the settlor (the person who creates the living/revocable trust) is treated as the owner of the trust as he can revoke it. Therefore, all of the income earned by the trust is included in the owner's income. When the owner dies, the assets of the trust are included in the owner's estate for federal estate tax purposes. Traditional methods of minimizing the federal estate tax, such as use of the unified estate tax credit and the unlimited marital deduction, can be incorporated into a will or a living trust. Thus, despite the claims of some living trust advocates, there is no income or estate tax advantage to establishing a living trust.

MISCONCEPTION # 2: Living trusts save time and money. **FALSE!** Living trusts often cost substantially more than a will. Proponents often argue that living trusts save the time and money associated with probate, including court costs and legal fees. In many situations, however, the decision whether to use a living trust comes down to whether a person wants to "pay now, or pay later." There are legal fees for setting up the trusts and transaction costs involved in transferring assets (such as fees for preparing and recording a deed to transfer real estate into a living trust). In the worst case scenario, the result is "pay now, and pay later." If all of the assets have not been transferred to the trust prior to death, those assets will have to go through probate anyway. The only person who is better off in this situation is the attorney who gets to set up the trust and administer the estate.

Even if someone sets up a living trust, he must still have a will to transfer any assets that were not transferred to the trust prior to death. In addition, a person who establishes a living trust needs a power of attorney in the event of incapacity of the individual in order that someone else can manage the assets that were not transferred to the trust prior to the incapacity.

MISCONCEPTION # 3: Living trusts ensure privacy. **USUALLY NOT!** The revocable trust can maintain privacy as to personal property, but not as to real estate. The transfer of real estate property into the trust as well as a Declaration of the basic aspects of the trust are recorded in the conveyance records of the parish where the property is located.

Furthermore, many banks and brokerage firms require a copy of the trust agreement in order to open an account for the trust. Consequently, living trusts do not guarantee that a person's assets will remain free from public scrutiny.

MISCONCEPTION # 4: Only living trusts can be used to manage the affairs and avoid interdiction of the incapacitated person. **NOT TRUE.** A durable power of attorney can avoid interdiction.

Proponents argue that a living trust saves the cost and time involved in getting a curator appointed. A durable general power of attorney can be used to manage the financial affairs of an incompetent person in lieu of an interdiction proceeding. A power of attorney generally is less expensive and more efficient than a living trust.

MISCONCEPTION # 5: Probate must be avoided at all costs. **NOT IN LOUISIANA!** Probate in Louisiana is relatively uncomplicated.

Probate is the process whereby the probate assets of the estate are distributed to the heirs or legatees. Although advocates of living trusts stress that probate must be avoided at all costs, the evils of probate are greatly overstated. Certainly, there are court costs and legal fees associated with probate, but these future costs may be less than the immediate costs of setting up a trust. In addition, many of the costs associated with probate, such as preparation of the federal estate tax return, will be incurred in administering a living trust as well.

In some states the probate process can be time-consuming and expensive, but in Louisiana it is relatively uncomplicated.

In a simple estate the heirs or legatees can go directly into possession of the probate

assets without an administration. In Louisiana, the actual probate costs are minimal compared to other states.

In an estate where an administration is mandated Louisiana now has the availability of an independent administration. In an independent administration the independent executor or administrator is named and/or confirmed and Letters of Administration are issued. The letters are the administrator's authority to handle the affairs of the probate estate without additional court appearances other than the final documents associated with closing out the estate.

Living trusts do have certain advantages. For example, if a person owns real estate in more than one state, a trust will allow his estate to avoid additional probate proceedings in states other than his domicile. However, an L.L.C. can be utilized which is less complicated, less costly and can shield you from personal liability. A living trust can also be utilized by a person, who is in poor health, or does not want to be bothered with investment decisions, in order for someone else to manage his affairs. However, it generally is less complicated and less costly to use a durable general power of attorney for this purpose.

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