

Private Clients Advisory:

Do I Need a Trust?

Misconceptions About Revocable Living Trusts in Pennsylvania

Whether it's a suggestion from a financial advisor, advice from friends and family, or articles found through Google or posted on social media, there is a commonly held belief that all estate plans should include a revocable living trust. The accuracy of this notion depends largely on applicable state law. In Pennsylvania, the majority of individuals and married couples with modest estates, and even many of those with significant assets, would not see many benefits from having a revocable living trust.

Below are three common misconceptions about trusts and probate in Pennsylvania, and reasons why the benefit of a revocable living trust is often overstated.

“Probate must be avoided “

Media reports and word-of-mouth “horror stories” have created negative public opinion and fear of probate court, which deals with the administration of estates. Indeed, court proceedings can be difficult in states like in California, New York, Ohio, or Florida, where probate is comparatively more complex and expensive than other areas of the country. But in Pennsylvania and many other states, probate is a relatively simple process for most small and moderate estates.

- Pennsylvania probate is informal. There are generally no court hearings, and the majority of the estate administration can be handled by the executor with minimal court oversight;
- Probate fees, which are based on the size of the estate, typically total less than \$1,000;
- Though it is advisable for executors to engage an attorney, which comes with fees, the major cost for any estate is preparation of inheritance tax returns and payment of the tax, which applies even to non-probate assets and cannot be avoided via trust.

Probate can get complicated—when beneficiaries dispute their shares, or significant creditor claims are involved—and large estates tend to invite more challenges. While factors that could complicate probate should be considered in any estate plan, the usual costs and complexity of probate in Pennsylvania do not justify creating a revocable living trust for most clients.

“A trust makes things simpler and will always escape probate”

Based on the belief that probate must be avoided, many clients believe they must have a trust. While they correctly note that assets held in a trust are not subject to probate, they may fail to consider

other factors. For one, any property that is to be part of the trust must be retitled, so that the trust is the owner. This can be a time intensive and sometimes expensive process depending on the number and type of assets that the client owns. There are also various legal requirements for establishing and administering a trust, and the legal costs associated with preparation, funding, and administration of the trust, including hiring a corporate trustee, may ultimately equal or exceed probate costs. Moreover, any property that is overlooked and remains owned by the individual rather than the trust, will still be subject to probate. Even if the client has a will that leaves everything to the trust (a “pour-over” will), that will must still be probated before that property can be transferred.

Trusts escape inheritance tax

While trusts avoid probate, they do not avoid Pennsylvania inheritance tax. With few exceptions, in Pennsylvania, any property that passes at death is subject to [inheritance tax](#), no matter if it passes by will, trust or law. Current inheritance tax rates are 4.5% for transfers to direct descendants and lineal heirs; 12% for siblings; and 15% for other heirs, with exceptions for transfers to a surviving spouse, to a parent from a child aged 21 or younger, or to charities and other tax-exempt organizations. There are more complex strategies that can be employed to reduce inheritance tax, but a standard revocable living trust won’t escape inheritance tax.

Conclusion: There is no “one-size-fits all” estate plan

Every estate planning client is unique, and it is important to discuss planning strategies with an attorney who can provide client-specific advice for handling discrete issues. Many law firms and other institutions offer a suite of standard documents for estate planning clients for a flat fee. These documents rarely vary from client-to-client and, when they involve unnecessary trusts, they often create more problems than they are intended to solve. As demonstrated above, a trust does not offer many advantages to Pennsylvania clients. However, a good legal advisor should assess every estate planning client’s assets, needs and goals to determine if the client would benefit from having a living trust versus a simple will. Clients may have particular assets that require protection, preservation and/or privacy, which a trust can provide. More complex income and estate tax planning often requires the use of trusts to minimize the client’s tax burden. Clients may own property in multiple states or have family members that live far away. In these situations, a living trust may have added benefits and simplify the estate administration while keeping costs down. However, a living trust is not a one-size fits all solution, and for some clients, a simple will may be all that is needed.

Estate Planning Questions

If you have questions about revocable living trusts, or any other estate planning matters, please contact any of the members of the Meyer, Unkovic & Scott Private Clients Group:

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